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138	..	Rai Sahib Kedar Nath, Rais.	Honorary Magistrate and President, Bundelkhand Orphanage, Banda.	409—410	..
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**The following persons were invited to give oral evidence but did not appear:—**

**LUCKNOW.**

1. Pandit Triloki Nath Bhargava, Chairman, Municipal Board, Lucknow.
2. Mrs. Gulam Hasan, Lucknow.
3. Raja Syed Ahmed Ali Khan Alawee, C.B.E., M.L.C., of Salempur, Lucknow.
4. Rai Bahadur Lala Sitaram, President, Legislative Council, and Advocate, Lucknow.
5. Mr. Ram Charan, M.L.C., Lucknow.
6. Mr. S. M. Habibulla, O.B.E., M.L.C., Lucknow.
7. Mr. A. P. Sen, Bar.-at-Law, Chief Court, Lucknow.
8. Pandit Jagat Narain, Golaganj, Lucknow.
9. Raja Jagan Nath Baksh Singh, M.L.C., Taluqdar, Rae Bareilly.
10. Mrs. Jagat Narain, Lucknow.
11. Lt. Raja Kalicharan Misra, M.L.C., Rais, Bareilly.
12. Pandit Govind Ballab Pant, M.L.C., Vakil, High Court, Naini Tal.
13. Rai Rajeshwar Bali, Taluqdar, Dariabad, District Bara Banki.
14. Pandit Tara Dutt Gairela, Hindu Sabha, Srinagar.
15. Baba Kartar Singh Bedi, Rais and M.L.C., Hardwar.
16. Rai Bahadur Vikramajit Singh, Advocate, High Court, Cawnpore.
17. Rai Bahadur L. Jagdish Prasad, M.L.C., Muzaffarpore.
18. (L. Dr.) Dr. M. O. Webb, Principal, Women's Medical School, Agra.
19. The Secretary, Sanatan Dharam Sabha, Muzaffarpore.
20. (L. Dr.) Dr. Susan Campbell, Women's Mission Hospital, Ajmer.
21. Mr. Anand Swarup, Rais, Muzaffarpore.
22. Principal, Arabic College, Deoband, District Saharanpur.

**AJMER-MERWARA.**

1. Mrs. Susan Campbell, L.R.C.P.S., Women's Mission Hospital, Ajmer.
2. Yumuna Devi Shastri, Singhji-ka-Rasta, Jaipur.
3. Mr. E. G. Gibson, I.C.S., District and Sessions Judge and District Magistrate, Ajmer-Merwara.
4. Lt.-Col. J. W. Watson, C.I.E., I.M.S., Civil Surgeon, Ajmer-Merwara.
5. Mr. K. Mull, Jaipur.
6. Sahibzada Abdul Wahid Khan, Additional District and Sessions Judge, Ajmer.
7. Mr. A. Miller, M.A., Principal, Government College, Ajmer.
8. Mr. Lakshmi Narain, Retired Tehsildar and Honorary Magistrate, Ajmer.
9. Mr. D. C. Wilkie, M.A., Missionary, Beawar, Rajputana.
10. Mr. J. A. DeSouza, Extra Assistant Commissioner, Merwara.
11. Mr. Amritlal K. Bapua, State Hospital, Banswara.
12. Mr. B. C. Oliver, M.D., Banswara.



# THE AGE OF CONSENT COMMITTEE.

## QUESTIONNAIRE.

**NOTE.**—*The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.*

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code ?

2. What are the circumstances which in your opinion justify—

(1) retaining the law of the Age of Consent as it is, or

(2) making an advance on the present law ?

3. Are crimes of seduction or rape frequent in your part of the country ? Has the amendment of the law made in 1925 raising the age of consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes ? If not, what measures would you propose to make the law effective ?

4. Has the amendment of 1925 raising the age of consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit—

(1) by postponing the consummation of marriage,

(2) by stimulating public opinion in that direction, or

(3) by putting off marriage beyond 13 ?

If not, what steps would you propose to make it effective ?

5. What is the usual age at which girls attain puberty in your part of the country ? Does this differ in different castes, communities or classes of society ?

6. Is cohabitation common in your part of the country among any class or classes of people—

(1) before puberty,

(2) soon after puberty,

(3) before the girl completes 13 years ?

Do any of these cases come to court ?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction ? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach ?

8. Is 'Gaona' or 'Garbhadan' ceremony usually performed in your part of the country. If so, does it coincide with or is it anterior to the consummation of marriage ? Is it performed generally after the attainment of puberty and how soon after it ?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and, early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the age of consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state, and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

#### EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—*The bracketed portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.*

#### SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case herein-after excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

#### SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

#### Section 376-A.

376-A. *Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Extracts from the Code of Criminal Procedure 1898, Schedule II.

\* \* \* \* \*  
Of Rape.

XLV of 1860 Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what court triable.
1	2	3	4	5	6	7	8
376	Rape— (If the sexual inter- course was by a man with his own wife not being under 12 years of age.)  If the sexual inter- course was by a man with his own wife being under (12) 18 years of age. In any other case .	(Shall not arrest without war- rant.)  Shall not arrest without war- rant.  May arrest without war- rant.	(Summons)  Summons  Warrant	(Bailable)  Bailable .  Not bailable	(Not compound- able.)  Not compound- able.  Do.	(Imprisonment of either description for 2 years, or fine, or both.)  Transportation for life, or imprison- ment of either description for 10 years and fine.  Do.	(Court of Session, Chief Presidency Magistrate or District Magis- trate).  Court of Session.  Do.
376-A	Illicit married inter- course by husband with wife not under 13 and under 14 years of age.	Shall not arrest without war- rant.	Summons	Bailable .	Not compound- able.	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magis- trate or magistrate of the first class.

## LUCKNOW.

**Written Statement, dated 11th August 1928, of Mr. SHIV DUT PANDE,  
Member, Executive Committee, Sanatan Dharm Sabha, Meerut.**

1. There is not a very acute public feeling in favour of raising the age limit in case of marital offences coming under sections 375 and 376 of I. P. C. But the age limit of 14 in rape cases by persons other than the husband of the outraged girl is felt to be quite inadequate.

2 and 18. The Age of Consent in extra-marital cases should be increased, because the girl of fourteen in this country confined within the four walls of a house is not sufficiently mature in intellect to realise the consequences. She is in fact only a budding woman whose health in most cases suffers by cohabitation whether she wills or no. The age must certainly be increased in married cases as well but the offence and the procedure for its trial must be quite different. The offence should be non-cognisable. There is a very great danger of abuse of authority and undue interference. A girl even if a loss to her health has been caused would be a very great loser if her husband rots in Jail. The crime is very seldom brought to light and hence the detrimental effect of punishment would be negligible.

3. The crimes of rape are not frequent in this part of the country, though seduction is frequent.

The change of law has certainly affected the number of crimes in this District.

The following chart will give you a correct idea of the same :—

Years 1922 to 25.—No. of girls raped of ages 5 to 14	25
Years 1925 to 28.— „ „ „ 7 to 15	18
Years 1922 to 25.—No. of women raped of ages 16 to 25	12
Years 1925 to 28.— „ „ „ 18 to 40	9

4. With the spread of education the age limit of girls at the time of marriage is generally increasing. People and mostly educated people postpone the marriage of their girls up to 14 generally. But no striking effect of the change of 1925 is apparent in case of postponement of consummation of marriage.

5. Making due allowance for the health, the occupation of the parents and poverty, in this part of the country girls begin to Thaturo about 13 and about 14 or 15 they attain puberty. In those classes where girls generally go about from house to house in discharge of some professional duty such as *nain*, washerwomen, and *Kaharies*, signs of puberty appear at 13.

6. Before puberty cohabitation is very rare and that too in very poor classes where girls are sent to husbands because their parents cannot support them. But generally cohabitation is common when girls appear developed; the criterion being health and puberty. There is no standard for fixing 13 as the period before which cohabitation is not done but generally the age of consummation of marriage is beyond 13. The cases of outraged married girls by their husbands never come to court except when the girl sustains violent injury to her person and police gets clue of the matter.

7. There is no religious sanction in favour of early consummation of marriage. On the whole though some sacred texts enjoin marriage before puberty there is a distinct ban on early consummation of marriage. The Ayurvedic shastra being strictly in favour of fixing 16 as the age of 'Garbadhan.'



Bharadwaj Sanhita, quoted in Muhurta Chintamani page 160. When a woman is subject to menses and when she is otherwise fit for bearing a child in the womb then only should a wise man cohabit with her for the purpose of getting an issue.

Bhavisya Puran. Women should not be cohabited with before 'Rajodar-darshan' i.e., period of menses. If any body cohabits he is tormented by hell-fire.

Sushrita—Subject on Sharirik.

A man who is not twenty-five and a woman who is not sixteen should not cohabit because in such cases a child is destroyed in the womb. If the child survives or comes out alive does not live long. If he lives long he is of weak physique. Therefore a man should not cohabit with a very young girl.

8. Gaona is generally performed in this part of the country, but 'Garbhadhan' ceremony is quite extinct at least in the form enjoined by Shastras. Gaona is performed from 1 to 3 years after marriage. Only in those cases where either the pair is a poor family or the wife and husband are both developed and young Gaona is dispensed with. In all cases Gaona is performed after puberty and consummation after Gaona and in some cases after Gaona or a second visit to her husband's house after Gaona.

9. Puberty is not a sufficient indication of physical fitness to justify consummation of marriage. Generally a girl is not fit for consummation at least two years after puberty. In cases where consideration is not paid to physical development the girl and her issue are both physically affected.

10. Intelligent consent to cohabitation can be given only by a woman about 20. An Indian girl locked in purdah does not realize the full consequences of the act she might be tempted to allow in a fit of passion.

11. There are numerous cases where early pregnancy and cohabitation shattered the health of girl wives. In one case a girl of 15 lost the use of her legs after delivery. In another the girl became hunchback and so ruined in health that she lost the use of her eyes. Numerous cases of tuberculosis specially of intestines had their origin in early delivery.

12. Certainly among other reasons the chief cause of the physical wreckage of the nation is early consummation and early maternity. With the growing poverty of our people and want of nourishing diet early maternity is playing havoc on our race. The power of resistance to disease being absent epidemics come too often to make a clean sweep of our country chiefly owing to low vitality.

13. There is no further development of public opinion for raising the age of consent except in very intelligent circles.

14. Women generally though themselves not inclined to have an issue at an early age like consummation of marriage for their children. Aged mothers selfishly want their young sons and daughters-in-law to cohabit expecting to see the face of a grandson. But on the other hand the girl's mother does not like the Gaona ceremony to be performed till her girl is sufficiently developed.

15. The age cannot and is not accurately determined especially when the opinion of medical men about age is not always accurate. Forgeries are committed with birth registers, but with a proper and efficient system of birth registration the error would be modified. Birth certificates if believed to be genuine by the presiding officer should be given preference over medical opinion.

16. The margin of error would be greatly reduced because a girl of 16 is very nearly a woman while a girl of 14 is still under development.

17. Marital and extra-marital offences should be kept separate. The minimum punishment for extra-marital cases being transportation is quite just but for marital cases it should not be more than 5 years. What consolation do we give to an Indian girl wife when we transport her husband and throw her for frying into the fire and leave her helpless in the world.

19. Making the offence a non-cognizable one in case of marital cases would be a safeguard against abuse of authority.

20. Penal legislation for age of consent and fixing minimum age for marriage will both bring out the desired end. People are certainly in favour of raising the age of consent here, but for the other remedy people would prefer legislation for fixing minimum marriageable age if allowance is made for the feelings of that orthodox section of the Hindu community who believe that the marriage of a 'Rajaswala,' i.e., a mature girl is a sin for the father. Subjection of the father to file an affidavit of his religious belief before the District Magistrate will result in unnecessary trouble to a father. It will give rise to endless means of abuse of authority. Some other form for the declaration of his belief which might be consonant with his dignity must therefore be substituted.

21. Social reform will eradicate the evil in the end, but the presence of the law in the statute-book is a sufficient safeguard towards offenders. Law must be given greater publicity, specially translation of changes in law, must be distributed free to the public.

**Oral evidence of Mr. SHIV DUT PANDE, Member, Executive Committee, Sanatan Dharm Sabha, Meerut.**

*(Delhi, 8th October 1928.)*

*Chairman:* I understand you are a member of the Executive Committee of the Sanatan Dharm Sabha, Meerut City.

A. Yes.

Q. Who is the president of the Sabha?

A. L. Ram Chandra Sarup Rai.

Q. What is the membership of the Sabha?

A. I cannot give you the exact number. There are about 60 members.

Q. You are appearing for the Secretary?

A. Yes. Secretary is L. Shiv Charan Das.

Q. Do you know if this questionnaire was put to the Sabha or the Executive Committee?

A. No. It was sent to me by the Secretary who asked me to send a reply to it. I ascertained the views of other members also by talking over the matter with them. But it was not formally put at a meeting. I consulted some leading members.

Q. Have you any reason to believe that this would be the avowed opinion of the rest of the Sabha also?

A. I certainly believe that so far as my replies regarding the limit at which the age is to be fixed are concerned the Sabha will agree with me.

Q. You mean the minimum age of marriage.

A. No. I mean the age of consent. As regards the minimum age for marriage the opinion given by me cannot be taken as the opinion of the Sabha.

Q. What is the age that you would advance the present age to?

A. 14 for marital relations and 16 for extra-marital relations.

Q. You seem to think that intelligent consent can only be given by a girl at 20. Is that right?

A. Not before 18.

Q. In answer to Question No. 20 you say, people would prefer legislation for fixing minimum marriageable age if allowance is made for the feelings of that orthodox section of the Hindu community who believe that the marriage of a 'Rajaswala' is a sin for the father. The age of 14 that you recommend is after that allowance has been made or you want any further allowance still?

A. If it is to be acceptable to the orthodox section the age should be 12 or 13. There are some who conscientiously believe that their daughters should be married before they attain puberty.

Q. Supposing we legislate penalising marriages. What is the age, you think, we ought to fix as a concession to orthodox opinion?

A. 13 at the most.

Q. And for consent?

A. 14.

Q. You think if marriages below 13 are penalised that would be acceptable to the orthodox?

A. I think so.

Q. What is generally the age at which girls attain puberty in your part of the country?

A. Between 13 and 14. Of course it will be different if a girl is exceptionally strong or exceptionally weak.

Q. Don't you think that if you fix the age at 13 that may lead, in some cases, to pre-puberty consummation?

A. There may be rare cases. Girls generally attain puberty at 13. I think the cases that you are thinking of will be rare. In my parts girls generally attain puberty at 13.

Q. Have you any reason to think that in your part of the country there is any consummation of marriage before puberty?

A. I have not heard of any case.

Q. In your part of the country, is it a common feature that men of over 35 years of age are married to young girls of 12 or 13?

A. No.

*Mrs. Beadon*—Is widow remarriage allowed in your part of the country?

A. It is not frequent. But with the advancement in ideas widow remarriage has begun to be performed. I know of one case. One of my relatives at Agra who is a perfectly orthodox Brahmin has married a widow. He is a Gour Brahmin. But cases are few and far between.

Q. When was that?

A. It was this year in June.

Q. In answer to Question No. 11 you say there are numerous cases where early pregnancy and cohabitation shattered the health of the girl wives. Can you give us details?

A. I know of a case where the age of the girl was 13 when she was married. The pair in that case was very ill-matched. The girl was of ordinary health but the husband was very healthy. The child was born at the age of 15 and after that she lost the use of her legs.

Q. Do you mean to say that she became lame?

A. After the birth of the child her legs were distorted.

Q. How long after the birth of the child was that?

A. Within one year.

Q. Is the child healthy?

A. The child is quite healthy.

Q. In another case you say the girl became hunchback and lost the use of her eyes. How was that? I would like you to explain to me a little in detail.

A. The girl was of ordinary health. After the first conception she became hunchback. After another conception her eyesight became dim. She is now a physical wreck.

Q. How many children had she?

A. I know she has three children.

Q. What was her age when she was married ?

A. About 13.

Q. What age is she now ?

A. I cannot give the exact age. She must be 10 or 12 years older.

Q. Is she still alive ?

A. Yes.

Q. What is the age of the youngest child ?

A. About 8 or 9 years.

Q. You say numerous cases of tuberculosis had their origin in early delivery. You know tuberculosis is a very common disease in these parts. Why do you say that this is due to early marriage ?

A. There are other reasons as well. Want of proper nourishment is another cause. Besides I have found that even in well-to-do families girls give birth to a number of children and then contract tuberculosis. Where there has been early pregnancy tuberculosis has been very common.

Q. Don't you find a good deal of tuberculosis in men students ?

A. Not as much as among women.

Q. Do you think that this disease is more common between the ages of 10 and 15 than between 20 and 30 ?

A. Women generally contract this disease at about 17 or 18 and after that it may develop and may result in death.

Q. But I want to know whether it is more between the ages of 10 to 15 than 20 to 30 ?

A. We cannot draw a line of division. I generally find that they contract tuberculosis between 15 and 20. After that cases are very rare.

Q. Have you found that in earlier years the number of women suffering from this disease is greater than the number of men ?

A. Yes.

Q. Would you say two women to one man ?

A. I cannot give you any figures.

Q. It is very difficult to say that early consummation is the chief cause of this disease. As you say want of nourishment is also a cause. Do you think that it is a potent cause ?

A. Yes.

Q. Why do you think that early maternity is a more potent cause than insanitation and lack of decent food ?

A. Because I find in the case of poor villagers who do not consummate marriage early there is little mortality. In cases where marriage is not consummated early you find that mortality is smaller than where it is consummated early even though the latter may have got more sanitary houses to live in. You will find that they suffer more from this disease. People who live in not so good surroundings, if they do not marry early, live a better life and do not contract diseases than those who live in good surroundings but marry early.

Q. But that may be because tuberculosis is commoner in cities than in villages. Is it not ?

A. I find that those who are not married early are generally healthier than those who are married early and get children.

Q. What is the marriageable age of women in Meerut ?

A. About 14 or 15.

Q. What about the villages ?

A. That is different in different castes. I find that Jat women are married at a very advanced age. They are married at 16 or 17 and even 18. In some cases where the parents are poor they do marry early as they do not want to have the burden of daughters hanging on their heads.

*Mrs. Nehru :* In your combined answer to questions numbers 2 and 18 you say, the age must certainly be increased in married cases but the offence and the procedure for its trial must be quite different. Can you tell us what difference you want in the procedure ?

A. In the first place I want that in marital cases the offence must be non-cognizable even if the age of the girl is below 12. Then the punishment should also be lighter. By sending the husband to jail we inflict a severe punishment on the wife also. In Hindu society there is no divorce. If there is any case deserving special abhorrence public opinion has the burden of proving it and the action can be taken against the man.

Q. How will public opinion prove it ?

A. Somebody will make a complaint.

Q. Who that somebody you want to be ?

A. The neighbour.

Q. Even at present everybody has the right of complaint and the offence is cognisable by the police if the girl is below 12.

A. But police interference is bad.

Q. What is the second suggestion ?

A. It is about the evidence of the girl being taken in camera.

Q. What is your object in doing that ?

A. So that the girl may not be put to shame.

Q. Have you any other suggestions to make ?

A. No.

Q. You say the punishment should be increased to 5 years. What object will be gained by that ?

A. I want the punishment to be reduced and not increased. I am suggesting that below 12.

Q. Would you like to make a differentiation above 12 ?

A. In the case of husbands who are below 18 there ought to be a nominal fine only. Because in that case it is the parents who are responsible. There must only be a warning or reprimand in such proceedings as provided for under section 562.

Q. In case of the boys below 18 would you like the parents to be made responsible in any way as abettors of the crime ?

A. No. The parents ought not to be punished.

Q. Would you like that the boy and the girl be separated and a bond to that effect be given by the parents of the girl or the parents of the boy to keep them separate till the prescribed age.

A. I would prefer that.

Q. Do you think it will work ?

A. Yes.

Q. Do you think there will be no difficulty in getting people who would be willing to take charge of the girl ?

A. The father will take charge.

Q. Supposing she has no father.

A. Then the guardian of the girl. On that score I don't think there will be any difficulty.

Q. Supposing that security bond is broken, what punishment would you like to be given for the breaking of that second offence ?

A. There may be nominal imprisonment, say, till the rising of the court.

Q. Do you suggest that because you think that a light punishment will make matters easier for the girl and she will suffer less ?

A. I think so.

Q. Do you think if the right of complaint is given to recognised social reform organizations it will work ?

A. I don't want to give this right to social reform organizations. These societies are never founded on a permanent basis. A society is formed and very soon it is dissolved. In course of time the interest slackens. There is always some sort of corruption in these societies. The right of complaint should be given to private persons.

Q. Do you think an individual will have more interest than a specially organised committee of vigilance ?

A. It is possible.

Q. How is it that so few people have taken advantage of it so far ?

A. The public has not so far been educated about this law. They don't know that there is any such law or some change in the law has been made.

Q. You say, the change of law has certainly affected the number of crimes in this Judgship. Are you quite sure that reduction of crime is due to the change in law ?

A. It may be.

Q. Do you know of any case where such crime was not committed on account of the existence of this law ?

A. No. Those who commit it do not know the law.

Q. You say in your answer No. 6 the cases of outraged married girls by their husbands never come to court except when the girl sustains violent injury to her person and police gets clue to the matter. Do you know of any such cases personally ?

A. I have read it only in the law reports.

Mr. Mithu—May I take it that you are for marriage legislation in preference to a law fixing the age of consent in marital cases ?

A. Personally I am. I do not commit my committee to this view.

Q. And is it for the reason that you find that the punishment rather goes against the girl herself ?

A. Yes.

Q. You have also said that girls are generally married in your part of the country at 14 or later. Will you kindly tell us why is it that you want the age of marriage to be fixed at 13 and not 14 ?

A. In that way we will be allowing for the opinion of the orthodox section.

Q. The period when first menstruation begins is 13 to 14. You think that a period of 2 or 3 years should pass before a girl can be regarded as fully matured for consummation.

A. That is the Ayurvedic law.

Q. But you suggest that the marriageable age should be fixed at 13 and not 14.

A. The reason is that we will in that case make allowance for the feeling of the orthodox people who conscientiously believe that it is a sin to keep the girl unmarried after the menstruation has begun.

Q. You further say that it has been your experience that the result of early marriage and early consummation is the weakening of the whole nation and yet you do not think that there should be legislation fixing the age at 14 or thereabout.

A. But in that sort of legislation you will be scaring away the orthodox people.

Q. You further say that intelligent consent cannot be given till the girl has reached the age of 18 and you further agree that our masses being mostly illiterate do not reach the age of discretion till even later. Will you kindly tell us why do you still fix the age in extra-marital cases at 16 only ?

A. In the first place it will be a very sudden advance.

Q. Do you fear an agitation in the country if you fix a higher age even in extra-marital cases ?

A. When I say intelligent consent cannot be given below 18 I take into account all the uneducated and the semi-educated masses. When I say the age should be fixed at 16 I mean that the general level of intelligence at 16 is such that a girl can give intelligent consent.

Q. Certainly you don't expect any agitation against it ?

A. There might be. In some cases consent is really given at 16.

Q. You know that the age of majority is 18 and that it has been your experience that girls who are generally confined to their house and are under purda can exercise their discretion at a higher age. In these circumstances why do you think that the age in extra-marital cases should be put at 16 ?

A. It will not be harmful if you fix it at 18.

Q. You spoke about Shastric injunctions. What do you refer to ? Is it about consummation before puberty ? Do you refer to that Shloke, 'Asht Barsha Bhavat Gouri' and so on ?

A. That is only for protection and not marriage.

Q. What is the Shastric injunction regarding marriage ?

A. There is nothing definite. There are some Shastric injunctions for consummation after puberty. There is nothing in the shastras laying it down that the girl should be married before they attain puberty. That is according to my interpretation. I don't think the Shastras say that marriage should take place before puberty. That is my view and not the Sabha's view.

Q. Is there any notion prevalent amongst the orthodox people that marriages should be performed before the attainment of puberty ?

A. The notion is there. But in practice we find that they are raising the marriageable age by themselves. If there is any shastric injunction it is not being given effect to. It is being observed more in its breach.

Q. If we fix the marriage age at 14 or 15, do you think there will be agitation ?

A. There will be agitation by the orthodox people no doubt. But very respectable people who believe in Shastras are ignoring them. Their girls are being married very late. It may be that they cannot get suitable husbands, but the Shastras are being ignored. But the belief is still there.

Q. Do you think consummation takes place immediately after marriage ?

A. It is different in different pairs.

Q. What is the practice ordinarily ?

A. When the pair is well developed, i.e., the man is about 20 or so and the girl is about 15 or so, the 'Patta Phera' ceremony is performed and the Gaona ceremony is dispensed with. But when the pair is not developed the Gaona ceremony is performed and it is generally performed 1, 3 or 5 years after marriage.

Q. Do you think there should be registration of marriages in order to ascertain the correct age of the girl and the boy ?

A. No.

Q. You think registration of births will secure the end ?

A. Yes.

Q. What is the practice as regards registration of births in your part ?

A. The whole system ought to be carefully corrected. You can know the exact age if the rules are strictly enforced. The punishment is provided for failure to register a birth but it is not given effect to. If the court reprimands one or two persons it will have a general effect and the people will report all births.

Q. A suggestion has been made that in marital cases before a case is actually started a preliminary enquiry should be made by a magistrate and if he gives the sanction then only the case should start. Do you support it?

A. I think I will support it.

Mr. Yakub : When was your Sabha founded?

A. I cannot give the exact year, but it was before 1900.

Q. May I know why should there be any difference about the age limit and punishment in marital and extra-marital cases?

A. There ought to be a difference between the two. In marital cases the purpose of the law is to stop these cases and not to harm the pair. It is a crime in both cases. But in extra-marital cases it is a heinous offence and the punishment must be severe.

Q. The real idea is to protect the immature girl from being subjected to the pains of womanhood. Why should there be any difference in treatment?

A. If both cases are treated in the same way we will be giving the girl extra trouble instead of helping her. Supposing we send the husband to jail what protection do we give to the girl who is now left helpless? Instead of being a help it will be a hindrance. The very object of the law would fail if you do not give her protection. By punishing the husband you are ruining the girl instead of protecting her.

Q. You say there is no very acute public feeling in favour of raising the age limit in case of marital offences. Why then do you recommend that the age must certainly be increased?

A. There is no information in the general public that the age of consent is being increased.

Q. Do you mean that this is against the general feeling of the public?

A. I only mean that the public feeling is not very acute. In general people do want a rise in the age. In fact the people do not know anything about it.

Q. You say that offence by husband should be made non-cognizable. By that do you mean that the right of complaint must be given to a private person including the girl herself?

A. Yes.

Q. Do you think that any wife would go to a court and lodge a complaint against her husband?

A. It will be rare, practically amounting to *nil*.

Q. Why do you give the right of complaint to the neighbour? Is there not the danger that on account of private enmity or malice people would go and lodge complaints?

A. But they will have the burden of proving it. If a man cannot prove, defamatory proceedings will be started against him.

Q. Do you then think that any person for the benefit of another girl would incur the risk of being prosecuted? Is the public feeling in India so much developed?

A. If anybody lodges a complaint he will have to take the risk.

Q. Can you tell me in the villages in India where such cases generally occur is there any public feeling at all?

A. No, because they do not know the law.



**Q.** Then it comes to this. No neighbour or any other man would be forthcoming to file a complaint. Can there be anyone who would for the sake of public benefit come and file a complaint?

**A.** For that we require education.

**Q.** Is it not a fact that such offences generally take place in villages where people are uneducated?

**A.** Not generally. If you compare the educated and the uneducated then certainly it may be a fact, otherwise I do not find that there are so many cases coming forth in villages.

**Q.** What is the reason, in your opinion, that the amendment of 1925 has had no striking effect?

**A.** The law will have no effect even if you raise the age to 20. Those who commit the crime will continue doing so. To make the law effective public opinion must be educated. Pamphlets should be distributed to make the law known. Until that is not done the crime will not be stopped.

**Q.** You mean to say raising of the age will not have any effect.

**A.** It is education and propaganda work alone that can bring the desired effect. Raising of the age will have its effect. Along with that there must be education and propaganda work. Both must have their effect.

**Q.** What is your knowledge of Hindu law? Have you read any Shastras in original?

**A.** I have read translations accompanied by originals. In preparing these answers I have taken the help of Pundits who were well-versed in Hindu law.

**Q.** Do girls go to the house of the husband of their own accord or they are sent by their parents?

**A.** They are sent by their parents.

**Q.** Can a husband have access to his wife without the consent or connivance of the girl's parents?

**A.** He can have access even when the girl is at her father's house. That may be a moral breach.

**Q.** Still you don't want the parents to be punished.

**A.** No.

**Mr. Bhargava :** You say that you propose to have the marriageable age at 13 and you say in your part of the country the marriageable age is at present 14 to 15. Do you want to decrease the age?

**A.** But that does not mean that there are no cases where marriage is performed below 13. Usually marriages are performed at 14.

**Q.** You would not object if the age is fixed at 14.

**A.** I only object in the interests of those who really and conscientiously believe that it is a sin not to marry a girl before she attains puberty.

**Q.** The conscientious objection you refer to is based on the following words of the law giver: "Ashta Varsha Bhavet, etc." Seeing that this rule is followed more in the breach than in the observance, do you not think that if the age of marriage is fixed at 14 that will only be a very small difference and there cannot be any very serious opposition to it?

**A.** Still the agitation will be there.

**Q.** Considering that the text is broken in other respects do you think that objection on this particular change will be well-founded?

**A.** No. I do not think the objection will be well-founded.

**Q.** Is Meerut noted for prostitutes?

**A.** I do not know.

**Q.** What is usually the age at which girls begin a life of prostitution?

A. I know nothing about it.

Q. You say that seduction is frequent in your part of the country. May I know at what age of the girls seduction takes place? Does it generally take place between 14 and 18?

A. Yes, it does.

Q. In extra-marital cases do you not think that the law will be giving inadequate protection to the girls if it does not insist on the age of consent outside marital relations being fixed at 18?

A. Only then it can be a case of intelligent consent and not be harmful.

Q. You say that these girls are usually seduced between 14 and 18. Do you not therefore think that this legislation is justified?

A. Yes.

Q. Do you suggest that sub-committees of Municipalities in big towns might be formed by virtue of a provision in the Municipal Act and that Committee might be authorised to bring to light such cases under the Age of Consent Law?

A. I fear that the authority may be abused.

Q. Do you think that a statutory committee should not be given this power?

A. No; it should not be given this power.

Q. Nor district or local boards?

A. No.

Q. You say that the parents of the boy and the girl should not be penalised. Supposing a marriage law is enacted on the lines of Sarda's Bill will you even then extend the same protection to the parents of the girl and the boy who are children as defined by the Act, or will you confine the protection only to cases under the Age of Consent Law?

A. In the case of the marriage law I will make them responsible.

Q. You say that a marriage law should be enacted. Do you think that without a marriage law the Age of Consent Law would be ineffective?

A. I personally think so.

Q. Do you not like that the age of marriage and the age of consent in marital cases should be identically the same or very near each other?

A. I believe so; but in these cases my answers are personal.

Q. You have suggested that you are in favour of previous sanctions being given by the Magistrate. But are there not cases in which the Magistrates themselves have a right to launch cases without giving sanctions?

A. That may be in very clear cases.

Q. You say that every member of the public should have the right to move the law. Under section 250 in case the accusation is not proved the accused gets some sort of compensation and under section 182 any person who makes a false complaint will be proceeded with. Do you want any further safeguards to be given to the accused in case of harassment?

A. These safeguards are quite sufficient. The compensation should be more in the case of husbands who are falsely prosecuted.

Q. Does it not happen that the girl is sent to the husband's house, and consummation takes place between the husband and wife, without the parents of the boy knowing nothing about it?

A. Yes; it happens very often.

Q. Is it not also possible that the father of the boy does not know anything about the union but the mother only knows?

A. Even the mother may not know it.

Q. So that do you think that if you make the parents of the boys and the girls responsible it will be very difficult to enforce the law?

A. It is and it may cause hardship also.

Q. Under the present guardianship law the husband is a better guardian than the father of the girl. Would you suggest that for the purposes of the law of the age of consent the father or mother may be regarded as a better guardian?

A. Yes; I think that a change in the law should be made to that effect. The husband cannot be a better guardian than the father.

Mr. Mudaliyar: May I take it that there will be no objection from the orthodox section to the law regarding consent?

A. There will be no objection to the law of consent.

Q. Have you come across any religious texts which fix the age of consummation at a particular age?

A. There is no such injunction fixing the age of consummation.

Q. You say that 2 years must elapse after puberty before the girl can be fit for consummation. May I know why then in the face of that opinion you have suggested 14 as the age for consent in marital state instead of 15 or 16? According to you the average age of puberty is 13 and so 15 or 16 should be the proper age for consummation.

A. I fix 14 because it will not be harmful. Menstruation generally commences about 13 and consummation may be after 2 or 3 years. But I include all cases to give greater facility to the general public and make the age for consent within marital state 14.

Q. I can understand your anxiety to reconcile public opinion in the case of the age of marriage. But what is exactly your difficulty in fixing the age of consent at 15?

A. The age of marriage is not going to be fixed beyond 14 for the present and if the age of consent is fixed at 15 there will be some difference between the two.

Q. So do I understand that instead of bringing up the marriageable age you want to bring down the age of consummation?

A. Yes.

Q. Not because 14 would be a healthy period for consummation?

A. No.

Q. It has been suggested that orthodox opinion is for the age of consent and not for the age of marriage because if the law is broken under the age of consent cases would not come to light; and things would go on very much as in olden days. Do you think that that view is unfair to the orthodox section?

A. I do not think so.

Q. Do you think that your Sanatana Dharma Sabha is against the age of consent?

A. No.

Q. As regards the punishment you suggest that the girl would be the worst sufferer if we send the husband to jail. Do you not realise that if there is a penal law it is not that we want to punish people, but it is with a view to correct offenders and get them on to the straight path. Take for instance theft. It is not for the purpose of punishing people that the offence of theft is penalised, but it is to prevent theft. In the same manner if there is an Age of Consent Law it is not there so that husbands might be punished but that husbands might be prevented from committing the crime.

A. It is certainly a check.

Q. Husbands that break the law will be few and the number of girls who will suffer will also be few?

A. But if we inflict punishment on the husband it will be harmful to the girl.

Q. But is there not the danger that the girl might become a permanent invalid as the result of early consummation? In that case what is the good of the husband being with her?

A. In those cases in which there is injury to the girl we punish the husband.

Q. It is only fine if the boy is below 18 it is deterrent ?

A. But it will put him to shame.

Q. Do you think that a boy of 18 will have any sense of shame ?

A. Yes, certainly.

Q. The punishment will only be fine and he will pay the fine ?

A. Instead of that a security bond might be taken.

Q. But who will give the security bond ? Evidently the parents. Should not therefore the parents be penalised for allowing the boy to have illicit cohabitation ?

A. Once the case is brought to light and you take a bond from the parents the parents will act up to the bond.

Q. When the parents of the girl send her to the house of her husband do they think that there will be no possibility of consummation ?

A. They might have a suspicion, but they have not the will to stop it.

Q. So that you would suggest that the parents should be defined as preferable guardians so that they may have the power to stop such consummation. Supposing your amendment is accepted would you penalise parents then ?

A. Even then penalising would be a hardship.

Mr. Kanhaiya Lal : Do you belong to the legal profession ?

A. Yes.

Q. You have given us some figures of cases of rape. May I know where you got those figures from ?

A. From the sessions judge's office.

Q. In support of the proposition that a girl is unfit for child birth till she is 16 you have cited Sushrut. In view of this would it not be safer to fix the Age of Consent within the marital state at 16 rather than at the figure you have mentioned ?

A. Really it would be better. But so far as marriageable age and age of consent should be together I would prefer 14 for the present.

Q. Are you not exposing the girl to the risk of danger to herself and her progeny by allowing consummation two years earlier ?

A. We do really expose her to danger, but the danger is not really so great when the age of consummation is fixed at 14.

Q. You say that a girl of 15 lost the use of the legs after delivery.

A. It is a mistake. It should be 13.

Q. May I take it that to conciliate orthodox opinion you are prepared to risk injury to the girl and her progeny by fixing the age of consummation at 14 ?

A. Yes.

Q. You have suggested that the police should be excluded from the inquiry in such cases. To whom then would you give the task of tracing and collecting evidence ; who will do the investigation ?

A. Section 202 Cr. P. C. might be used and the district magistrate might start the enquiry.

Q. But who is to collect and produce the evidence ?

A. The man who makes the complaint.

Q. You have excluded vigilance societies from the responsibility of collecting this evidence. Do you not think that vigilance societies or social reform organisation can be better trusted with these things ?

A. I fear abuse there.

Q. Why should there be danger of abuse from associations and not from individuals ?

A. Individuals will have a greater burden of proving the thing. They will be personally responsible whereas the associations will be only collectively responsible. The Secretary of the association will usually sign the reports on behalf of the association and there is also the danger of greater credence being given to such reports simply because they come from associations.

Q. Would you like the village panchayats or local panchayats to be given these powers ?

A. The powers might be given to communal panchayats but not to local panchayats.

Q. If you raise the age of consent within the marital state to 14 as you recommend, can you suggest any measures for making the law effective and bringing cases to light ?

A. I have suggested publication.

Q. You have suggested that the age of consent in non-marital cases might be fixed at 20. Do you not think that there might be cases of young men falling a prey to temptation coming from girls of an immoral character or prostitutes ? In such cases do you not think that if the age of consent is fixed at 16 the danger will be less ?

A. Yes ; that might be fixed.

Q. Is the registration of births working satisfactorily in your province ?

A. No. In some cases the parents forget to send the information and they give the wrong date when they actually send the information some days afterwards.

Q. Can you suggest any method of making it more effective ?

A. Greater vigilance on the part of the registering authorities.

Q. Would you suggest that the names of the children should be entered in the birth register ?

A. Yes.

Q. Would you suggest that a supplementary report should be made after the name of the child is given ?

A. Yes.

Q. Would you be in favour of registration of marriages so that evidence may be available about the parties to the marriage, and the ages of the boy and the girl, etc. ?

A. This would be very offensive. People would not like the idea of getting marriages registered. I cannot say what the Muhammadans would say about it, but Hindus certainly would not like the idea.

**Written Statement, dated the 8th August 1928, of Mr. JAMSHED ALI KHAN, Bagpat Estate, District Meerut.**

1 to 3. Yes, there is a dissatisfaction with the state of the law in respect of improper seduction for immoral purposes, but there is no dissatisfaction in respect of rape within the marital state, because they are seldom put for trial. I have been an Honorary Magistrate of the 1st class for the last 18 years but not a single marital rape was ever brought to my court.

Extra-marital rape also is not very frequent in this part of the country, but the amendment of the law made in 1925 has practically failed in preventing or reducing the number of such cases. An extension of the Age of Consent for extra-marital rape would make the law more effective. In this part of the country girls at the age of 14, for want of education, have not the due realization of consequences ; therefore 20 years ought to be the age of intelligent consent, in cases of extra-marital rape.

4. The amendment of 1925 has not been found effective in protecting married girls from early cohabitation with their husbands, nor do I hope that any further amendment will check these offences, because they have a private nature. They are always kept concealed and very seldom put for trial. I find no help of them. They often occur when a small girl is married to a grown up man. None but the guardians can do something by keeping them beyond reach of their husbands. I think that a liability of the offences shifted to guardians will make the law more effective.

5. Girls of better living in the age of 13 and poor girls of low classes at the age of 14, usually attain puberty, in this part of the country.

Girls living on flesh and fish and other animal diets seem to attain puberty sooner than mere vegetarians.

6. Cohabitation before, or soon after, puberty is generally found among classes accustomed to hold early marriages, but they are never tried in court. I may say that it is confined to some Hindu tribes for it is very rare among Muhamedans and other classes.

7. The Muhamedan religion neither lays any injunctions nor any prohibitions for early marriage but it strictly prohibits too early consummation and proscribes heavy penalties for breach.

8. The Gaona ceremony is usually performed by Hindus and some low Muhamedan tribes in this part of the country. It might have been adopted as a safeguard against early cohabitation at the very outset, but it is no more so. There is no time fixed for it. Rich families of well-educated Hindus who have a due realization of the consequences might, in some cases, wait till the young folk have fully developed, but in most cases the parents or guardians think only of their financial condition. They are anxious to be relieved of the liability as soon as they are financially in a position to perform it. In its present state it can be no bar against early cohabitation.

9 and 10. I think that attainment of puberty is a sufficient indication to justify consummation of marriage for nature is apt to make no mistakes. We can appoint no other standard. All living beings act under the same law. Our prudence as men, however demands a little more circumspection to wait till the organic functions have been well established.

I think 15 years is the proper age for marital consummation, but it is not enough for extra-marital cases. It should be at least 20 years for an intelligent consent in that case.

12. Early consummation and early maternity can be reckoned as causes of infantile mortality, or physical and intellectual degradation, but it would be unjust to make them wholly responsible for them all.

13. Since the amendment of the law made in 1925 the public opinion in this part of the country has been developing in favour of extension of the Age of Consent, in respect of extra-marital rape. I have heard people complain against the weakness of the law about them. But there is no such complaint about marital states, because most people do not think it a sin or a crime to commit them and they are almost never put for trial.

14. Yes; difficulties have often been experienced in determining the true age of girls in the case of seduction. I think that Registers of Births and Deaths kept more carefully will remove or minimise them.

16. Yes, the extension of the Age of Consent about 14 years will minimise the difficulties of determining age, as well as reduce the number of cases of extra-marital rape.

17. Yes, marital and extra-marital are quite different from each other and should, therefore, be separated from each other.

18. I quite agree with Sir Hari Singh Gour's Bill about this question.

19. Yes, a liability of the offence shifted to the guardians will be a safe guard against collusion or extortion to protect the offenders.

20. I am of opinion that fixing a higher Age of Consent for marital cases will be more agreeable to Muhamedans, because fixing a minimum age of marriage will be an interference with the Muhamedan religion. As Islam fixed no age for marriage the Musalmans will object to a legislation contrary to their religion. And in fact early marriage in certain cases is quite essential; for example think of the difficulties of a gentleman who owns a big landed property and only a young daughter about 8 years of age, to succeed him as his heiress after his death. His brethren are not on good terms with him. They wish to be wrongly benefited with his estate and to give his daughter in marriage to a wicked man whom he does not like, or to kill her if they can. He is suddenly overtaken by a fatal disease and has no hopes of recovery. He has already selected a good gentleman to be his son-in-law upon whom he can rely for the safety of his daughter and estate. He is in a hurry to complete the marriage to make his daughter and estate secure in her husband's hands for if he leaves them and dies they are sure to be ruined, but he is not legally entitled to do so because the girl is only 8 years old. I stop my pen here, fearing that I shall go out of my scope in going further.

It would not be out of place to mention here that though Islam allows early marriage, it strictly prohibits early consummation and has heavily penalised it.

### Oral Evidence of Mr. JAMSHED ALI KHAN, Bagpat Estate, Meerut District.

(Delhi, 8th October 1928.)

*Chairman* : Are you the owner of the Bagpat estate ?

A. Yes.

Q. Where is Bagpat estate ?

A. It is in Meerut District.

Q. Does your part of the country consist mostly of Shias or Sunnis ?

A. Majority are Sunnis.

Q. Is your knowledge confined to Muhammadans only or have you any knowledge about Hindus also ?

A. My knowledge is generally confined to Muhammadans ; but I know a little about Hindus also.

Q. Do you hold the view that the age of consent outside marriage with due realisation of consequences should be 20 ?

A. I will modify what I have said and put it at 18.

Q. But do you hold the view that no such age limit is necessary inside marriage ? Do you think that it would be against Muhammadan law ?

A. Mostly due to that. What I understand is that there should be no age limit for marriage.

Q. Is there no age fixed about marriages in the Muhammadan law ?

A. No.

Q. Is puberty then the test ?

A. Some signs have been described in the religious texts, but no particular age about puberty is given.

Q. Is there any injunction in the Muhammadan law about the age of consent ?

A. The Muhammadan law does not lay down any particular Age for Consummation or the Age of Consent in intra-marital cases.

Q. Supposing a girl is 12 or 12½ years of age when she attains puberty, according to Muhammadan law consummation can take place at that age, but according to

the law of the Age of Consent in intra-marital cases consummation cannot take place before she is 13. Do you not think that the law has trenched on the Muhammadan law in this respect?

A. Yes; it has.

Q. What is the marriageable age amongst Muhammadans in your part of the country?

A. Mostly between 12 and 13. In high classes it is 17 and 18.

Q. Do girls attain puberty before marriage?

A. Generally marriages take place after puberty.

Q. Do you think there are any cases where a girl attains puberty at 12 or 12½, she is married and consummation takes place before 13?

A. No, not in my knowledge.

Q. With reference to para. 6 of your statement, can you tell us amongst what class of Hindu tribes cohabitation before or soon after puberty takes place?

A. Mostly the depressed classes like the Chamars.

Q. From your experience of Muhammadan girls do you think that if a girl becomes a mother before she completes 14 years it is in the interest of the mother or the child?

A. No; it is not.

Q. At what age do you think motherhood would be safe?

A. It must not be below 17 or 18.

Q. If you think that motherhood below 17 or 18 is an evil what remedy would you suggest to prevent early consummation and early motherhood?

A. Social reform and propaganda. It is diminishing day by day chiefly because of propaganda.

Q. Would you wait for the whole of India to be reformed by propaganda?

A. It cannot be helped.

Mr. Kanhaiya Lal: You recommend 15 for Age of Consent in marital cases. Do you think this will in any way be incompatible with Muhammadan Law?

A. No.

Q. Have you consulted Maulvis?

A. No; not on this point.

Q. The Committee would like to have from you authorities which you say, strictly prohibit early consummation. Will you kindly send them to us?

A. Yes; I will do so.

Q. You have said that the registration of births is not working satisfactorily. Can you suggest any measures for improving this system?

A. As I have said these registers of births and deaths should be kept more carefully.

Q. What are the defects in the existing system?

A. It is very difficult to find out the exact age of people.

Q. Can you tell us whether you would like to have a system of registration of marriages, giving the names and ages of parties and other particulars so that it may be useful where the age of persons is in question?

A. Yes; I approve of it.

Q. Who should be the authority for registering these marriages? Would you suggest that the register should be kept by Tahsildars or Deputy Commissioners, or Lambardars?

A. In the case of Muhammadans the Kazis may keep the register and copies of them can be kept in the district offices.

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Q. Would it not be better to have a common register for Hindus and Muhammadans and to have it maintained by some official appointed by law or by some executive authority ?

A. The Kazi would be better able to keep the register in the case of Mussalmans.

Q. Is there any harm, if the Tahsildar is required to keep the register ?

A. No.

Q. What about the Hindus ? Who should keep their registers ?

A. As far as I can understand it, the priests can maintain them.

Q. But these priests are not licensed. Would you license our Kazis and priests ?

A. Even now in Meerut there are licensed Kazis who keep these registers and a copy of the registers is kept in the headquarters. The priests and Kazis may be licensed for the purpose.

Q. The law of the Age of Consent in marital state has been inoperative in the sense that very few cases of infringement of the law have come to light. Can you suggest any measures for making the law effective ?

A. It is due to want of education. As a matter of fact most people do not know that it is an offence and a crime.

Q. Would you make the offence cognisable or non-cognisable ?

A. Non-cognisable and compoundable with the permission of the court.

Q. To whom would you give the power to make complaints.

A. The proof would be on the complainant. Anybody who wants to make the complaint can do so.

Q. Would you give the power to social reform organizations or vigilance societies ?

A. I do not think it is a good idea. It will not work properly.

Q. Who should investigate and collect evidence ?

A. The burden of proof is on the complainant.

*Mr. Mudaliar :* As regards the age for marriage one can understand religious objections. But you also add a practical objection, namely, where the father is on the death bed and wants to marry the girl before the prescribed age. In such cases, would you not be satisfied if there is some authority who would exempt marriages below the age fixed ?

A. My opinion is that there should be no law regarding marriage.

Q. As a matter of fact is not the age of marriage well over 14 even now ?

A. It is a custom, but no law should interfere in these matters.

Q. In answer to question 19 you say that ' the liability of the offence shifted to the guardians will be a safeguard against collusion or extortion to protect the offender.' What do you mean by that ?

A. In marital cases when the guardians are thought to be responsible for bringing the parties together, and having consummation performed, I am in favour of the guardians of both the parties being penalised. There will not be early marriages if that is done.

Q. Apart from the religious difficulties the practical difficulties can be got over if a system of exemptions were put in operation ?

A. Yes.

Q. Then it is only the religious difficulties that will stand ?

A. Yes.

*Mr. Bhargava :* So far as these exemptions are concerned, would you also suggest that exemptions can be made in cases in which persons go to courts saying that they have conscientious objections and they want to marry their girls at 12 ?

A. In my opinion the exemptions should be granted only in very special cases.

**Q.** You say that 15 should be age for marriage. Would you suggest that it should be the same for the Age of Consent in intra-marital relations ?

**A.** Yes.

**Q.** Do you think that early marriages will be put a stop to if you penalise the parents or guardians of the parties ?

**A.** Yes.

**Mr. Bhargava :** You have just said that if you penalise early marriages you will be able to stop them. Do you think, if a marriage is celebrated the parents should be penalised ?

**A.** Yes.

**Q.** Supposing the parents of the children who are responsible for early marriage are penalised, you don't think that there should be any law for penalising parents in respect of consummation.

**A.** No.

**Q.** You say this offence should be compoundable. Do you not think that when the girl is very young, say, below 12 or 13, the husband who is responsible for the injury should not go scot free and the case should not be compoundable ?

**A.** In a case where the age of the girl is very low, the case stands on a different footing. When the age of the girl is less than 14, I would not like it to be compoundable. It should be compoundable only when the girl is above 14.

**Q.** Who should be able to compound ?

**A.** The girl herself.

**Q.** She may be a minor.

**A.** It is her right.

**Q.** When you think that a girl cannot give intelligent consent before 18, do you not think that you are arming her with a power which may be abused ?

**A.** These are two different things. To give consent to cohabitation is different from giving consent to the offence being compounded.

**Q.** I understand you desire that up to the age of 18 the boy should not be punished if the girl is the consenting party or if the girl is able to or willing to compound.

**A.** If the girl is above 14 then only the offence should be compoundable.

**Q.** Are you considering the case of boys below the age of 18 or the case of grown up persons ?

**A.** In the case of grown up persons also it should be the same.

**Q.** You say that everybody should have the right of complaint and you wish that the right of complaint should not be given to social reform organizations ?

**A.** Yes.

**Q.** May I understand that you are not in favour of exclusively giving the right to anybody but would include the social reform organizations also ?

**A.** No. I am not in favour of giving the right to social reform organizations at all.

**Q.** You have just said that you are in favour of registration of marriages. As a practical proposition do you realise that a man who is perhaps living at a distance of 20 miles from the headquarters of the district will have to go over and inform the Qazi, and the Qazi will have to make the enquiry and that it will be a great hardship in practice ?

**A.** My idea is that there ought to be a Qazi in each Tehsil and a Naib Qazi in different parganas of the Tehsil and there should be a corresponding Pundit and a sub-pundit in all Tehsils, so that this sort of thing may not occur. For instance, in my district there is a Qazi and there is a Qazi for two Tehsils also. He has got a license from Government.

**Q.** Under what Act ?

A. I cannot tell you that.

Q. Who appoints them ?

A. The local Government.

Q. Is it in the whole of U. P. including the rural areas ?

A. Yes.

Q. Have you got a corresponding thing for the Hindus also ?

A. Not to my knowledge.

Q. So far as the breach of the Age of Consent law is concerned do you not think that this registration of marriages will be of no effect whatsoever, because the prosecution will be made very soon after marriage and those who register the marriage will be tempted to give wrong ages of the marrying parties ?

A. It would be useful in divorce cases and restitution of conjugal rights. So far as the law regarding the age of consent is concerned it will not be useful.

Q. You say there is a system of registration of births and deaths in your province.

A. But the entries are not very accurate.

Q. Is there any obligation on the parents of the child to report the birth to the chowkidar or somebody else in the rural areas ?

A. Every parent is supposed to go and register the birth. I don't know whether there is any statutory obligation. It is one of the duties of the chowkidar to take the information regarding births and deaths to the *thana* after a week or so. There is a register kept for the purpose by the chowkidar. From the *thana* that register is sent to the Civil Surgeon.

Q. Are you in favour of any statutory obligation being imposed on the parents of the child to report a birth ?

A. There must be some small penalty.

Q. As regards the towns is there any obligation to report the birth and is that obligation enforced ?

A. That is not enforced. But generally in municipal registers you will find very rare cases of a birth missing. Municipalities are more correct than the rural areas.

Q. I understand that you think that it will be opposed to Muhammadan law if any age of marriage is fixed. May I know any authority on the point ?

A. According to Muhammadan religion there should be no restriction regarding the age of marriage.

Q. Supposing there is no injunction either way for allowing or prohibiting marriage at a particular age, would you not then in the interests of the nation like to have the same law both for Hindus and Muhammadans ?

A. Under those circumstances I would be the first and foremost man to say there ought to be something common.

Q. I understand that Muhammadan law does not enjoin marriage at a particular age ?

A. Of course I cannot give you a very satisfactory reply on this point as I am not a Mulla or a Moulvi. But I have consulted different Moulvis on this particular point and I have been told that this is against the Muhammadan religion.

Q. You say most people do not think it to be a crime to cohabit with a girl of 12 or 13. Is that correct ?

A. Quite correct.

Q. Do you not think that social propaganda work should be taken up by Government also ?

A. In what way ?

Q. For instance, there is the health officer whose duty it should be that he should go to the villages and deliver lectures and give cinema shows, etc.

A. I quite approve of the suggestion.

Q. Would you also like that the Tahsildar and other officers when they go out in the villages they must make some sort of note in the book of the Zaildar or the Lambardar just to encourage them to carry on social reform propaganda ?

A. Yes. I am in favour of Government taking up social reform propaganda work.

Q. What other ways will you suggest to make it effective ?

A. These Moulvis and Pundits should take up this work. They should give lectures and call meetings. There are different bodies in each and every district for carrying on different sorts of work. These associations should take up propaganda work in hand.

*Moulvi Mohammad Yakub* : Have you read any original works of Hadis ?

A. No.

Q. Can you enumerate the Sihasittas ?

A. There are 7 books of Hadis. I may recollect and enumerate.

Q. Which Ulmas did you consult ?

A. I consulted three.

Q. Did they show you any authority ?

A. No. I was not in a position to cross-examine them.

Q. You believed them without seeing any book on Muhammadan law ?

A. I was not in a position to ask them to produce the books.

Q. I believe you have not come before this Committee as a representative of the Muslim theologians.

A. Certainly not.

Q. You have said you would like a system of licensed Qazis. Supposing licensed Qazis are appointed and a Muhammadan gets a marriage performed by a person other than the licensed Qazi, will it be legal according to you ?

A. Yes.

Q. How would you make the system of licensed Qazis effective then if marriages by persons other than the Qazi are also to be legal ? Is it at all necessary that according to Muhammadan law marriage should be performed by a licensed Qazi ?

A. No, it is not necessary.

Q. If you make it compulsory that a marriage to be legal must be performed by a licensed Qazi, will it not be an interference with Muhammadan law ?

A. It will be an interference.

Q. And therefore you would not like any legislation on this particular point ?

A. No. I am not in favour of any legislation. But the appointment of Qazis will be of great advantage otherwise.

Q. What will be the use of appointing licensed Qazis if other persons can also perform marriages ?

A. As soon as this system will be introduced I think, it will be adopted generally by the public because it has been very difficult sometimes to prove a marriage.

Q. But how will that affect the question of marriageable age ? So far as this question is concerned the appointment of licensed Qazis will have no effect.

A. No.

Q. You said raising the age from 12 to 13 was an interference with Muslim law. In fact, according to you if you fix any age it will be an interference.

A. At the same time I mentioned that I had not consulted any Moulvi on this particular point, regarding the raising of the Age of Consent.

Q. You don't think that this was an interference with Muhammadan law ?

A. I think it was.

Q. Did you or any other Moulvi raise any objection ?

A. I did not, nor did any Moulvi so far as I know.

Q. Is it necessary according to Muhammadan law that there should be the Qazi or any third person to solemnise the marriage ?

A. Two witnesses are essential. Qazis are not required according to Muhammadan law.

Q. Probably you are aware that according to Muhammadan law marriages can be performed with first cousins.?

A. Yes.

Q. Do you also know that Khalifa Umar prohibited such a marriage because he thought that the progeny of such a marriage would be weak ?

A. Might be quite correct. I don't know.

Q. If it is a fact that Khalifa Umar prohibited such marriages, did he interfere with Muslim law ?

A. I cannot say about that.

Q. What is your authority for saying that among Muslims marriages take place between 12 and 13 ?

A. That is my personal knowledge.

Q. Can you give us any statistics ?

A. No.

Q. What do you mean by 'my part of the country'? Do you mean Bagpat ?

A. I mean Meerut division.

Q. What is the population of Muslims in Meerut division ?

A. I cannot give you the exact figure.

Q. Are the Muslims in a majority ?

A. No.

Q. Is it not a fact that there is a general tendency among the Muslims to raise the age of marriage ?

A. Yes, that is right.

Q. You say that consummation of marriage should not take place before the age of 17. Will it not be incurring a risk if marriages are solemnised earlier than that age ?

A. Certainly you run the risk.

Q. What measures would you suggest to avoid that risk ?

A. Education.

Q. What is the reason that public opinion is more keen about extra-marital cases than about intra-marital cases ?

A. Marital relations are of a private nature, and people do not like all sorts of private things being brought to light.

Q. Do you mean to say that a girl who has undergone the ordeal of marriage can be subjected to any sort of trouble and any sort of outrage ?

A. That is not what I mean. These marital cases are of a private nature.

Q. What do you mean by 'private nature' ? Don't they concern society at all or the nationhood of the country ?

A. I don't mean that. But these are two different things altogether.

Q. I want to know why is there so much anxiety about girls who have not undergone the ordeal of marriage ?

A. These cases come before everybody. They are open and public.

Q. Do you mean to say the number of girls who have intercourse without marriage is larger than the girls who are married ?

A. It is very difficult to form any opinion about that.

Q. You have also said that the amendment of 1925 has not been effective. Can you give us any reasons for that ?

A. It is not known to be a crime on account of want of education.

Q. Do you mean to say no amendment of this section will make any improvement ?

A. I think so.

Q. You say that 15 years is the proper age for marital consummation and you have also said that early consummation and early maternity can be reckoned as a big cause of infant mortality and decay of intellect and all that. Will it not be proper to fix that age by means of legislation ?

A. Yes.

Q. Will it be an interference with Muslim law if by legislation an age of consummation is fixed ?

A. I did not consult the Moulvis on this point. I am unable to give any answer to this question.

Mr. Mitra : You are a member of the local Legislative Council ?

A. Yes.

Q. What constituency do you represent ?

A. Meerut, rural (Muhammadan).

Q. What is the number of voters in that constituency ?

A. I cannot give you the exact figure. It is something like 20 thousands.

Q. In answer to Question No. 7 you say Muhammadan religion neither lays any injunctions nor any prohibitions for early marriage but it strictly prohibits too early consummation and prescribes heavy penalties for breach. As regards the latter portion you are not quite sure about stating authorities prohibiting too early consummation but as regards the first portion you are quite certain ?

A. Yes.

Q. We can take it that Koran is silent about the age of marriage ?

A. Yes.

Q. Personally speaking you give 17 as the age of safe motherhood and you say menstruation begins at 13 years.

A. Yes.

Q. Apart from scriptures you will like to fix the age of marriage and the Age of Consent at 15 ?

A. Yes.

Q. Because you agree that after marriage it is very difficult to check consummation ?

A. Yes.

Q. What, do you think, is the reason for marital cases not coming to court ?

A. I have got the same reason that they are of a private nature.

Q. Do you think that if there is a special procedure to have these cases tried, e.g., by camera trials or after the previous sanction of the District Magistrate is obtained, more cases will come to court ?

A. I think so.

Q. You think that even under the present law the intra-marital cases far outnumber the extra-marital cases, because generally the age of marriage is 12 and 13 and consummation takes place soon after, but that only a few cases come to court.

A. Yes.

Q. Do you think the nation suffers very much more where consummation takes place earlier than in the case of few extra-marital cases ?

A. Yes.

Q. You perhaps will agree that marriage amongst the Hindus is considered to be a sacrament, and among the Muhammadans, it is considered to be more or less a contract.

A. Yes.

Q. Don't you think that if you insist on registration of marriages, that may really be resented by the Hindu masses?

A. I can't say.

Mrs. Nehru : I want to know why you favour the raising of the Age of Consent and oppose the fixing of the marriageable age for girls on religious grounds?

A. Only because Islam does not allow us to have any sort of legislation on this point.

Q. I thought you said that Islam neither fixed any age for consummation nor for the celebration of marriage and therefore the two stood on the same footing and there was no reason to support the one and reject the other.

A. No. I said that, about consummation, I did not consult the Moulvis and therefore I could not authoritatively say whether fixing the age of consummation would be against Muhammadan law.

Q. Is there any dissatisfaction amongst the Muhammadans about the Age of Consent as it now exists?

A. I don't think.

Q. If we raise the Age of Consent there won't be any dissatisfaction?

A. As far as I know there will be none.

Q. You do not want to restrict the right of complaint to any social reform organization but if it is left to the public, don't you think that there is a risk of people misusing it?

A. Of course there is a chance.

Q. Would you not therefore suggest that this power which exists at present with everybody should be restricted to certain trustworthy people?

A. It should be like any other case under the Indian Penal Code. It is the duty of the court to see that the complaint is not false. They should judge according to the merits of the case.

Q. You don't think there is any likelihood of people taking undue advantage of this?

A. People are very reluctant to come to court.

Q. People who are already inimical to one another may take advantage of this?

A. It is quite possible there may be cases of this nature. There is certainly a risk and I would rather run the risk.

**Written Statement, dated the 13th August 1928, from Mr. SUDHARSI LAL JAIN, President, Jain Sabha, Mohalla Palki Khana, Aligarh City.**

I give answers of your 21 questions collectively as below :—

This Jain Sabha invites your attention towards the Natural and Admittedly fact an axiom, which desires no proof, that as Zinic (\* \*) Place (\* \*) Merut (\* \*) and Order (\* \*) of one country differ from the other, so is the case with religions, castes, ceremonies and rites of different countries also, more so in India where there are many religions and castes. Somewhere girls have their monthly course commenced at 11 years and somewhere at 12, 13 and 14 years of age according, to the climate, heat and cold of the place, and health and ill health of the body. This should be considered, that, if the age of marriage for all girls, whether

healthy or sick, strong or weak, is fixed the same, how much will it be advantageous to them. Physics and religions "*Shastras*" both say that a girl's monthly course commences nearly at 12 years of age and after that she is fit to be a mother. If under Law she is to be married at 14 or 16 years of age, it is possible, she may lose her family respect, safety of which is her most important deed at all events. Therefore such law would be improper. In our country Boys and Girls entirely depend upon their parents for their marriages, they cannot marry themselves, as they like, which is called the age of consent. A girl is married before her monthly course commences, and her "Gaona" is to be held after a year, or 3 or 5 years as the case may be, when she attains the age of after 12 years. This should be called the age of consent in this iron age.

We are of opinion that old men of the place are well aware with all their castes rulings, so the Benign Government should appoint 5 castes men "Panch" of the place, who are deserving in every respect to decide about the marriage, age of consent etc., etc., as was the old custom of castes "Panchayat" which have disappeared now, then there will be left no more necessity of making such Laws. Every year the working of such "Panchayats" should be supervised by the Government officials and necessary changes should be made therein. The Sabha trusts that our humble request will be taken into consideration, for which the Sabha will be obliged.

2. Boys and girls, at any age they are married by their parents, should in no case be deprived from getting Education, as a Human Being is just like a beast without Education.

3. Legislation and Education should both be forced to make males and females moral good, and wise—so as to say:—

Abstain from doing wrong by which we lose—

1. We lose if we tell lies.
2. We lose if we steal.
3. We lose if we commit adultery.
4. We lose if we practice hypocrisy.
5. We lose if we commit murder.

Gain by doing right—

1. We gain if we tell truth.
2. We gain if we do not steal.
3. We gain if our character is good.
4. We gain if we are sincere.
5. We gain if we be kind.

4. Gour's Hindu dissolution marriage bill should never be passed for the reasons given in this Sabha's letter dated 28th June 1928, addressed to the Private Secretary to His Excellency the Viceroy and Governor General of India.

**Oral evidence of Mr. SUDHARSI LAL JAIN, President, Jain Sabha, Aligarh.**

(Delhi, 8th October 1928.)

*Chairman:* I understand you are the president of the Jain Sabha, Aligarh ?

A. There are two Sabhas one in Mohalla Palkikhana and the other in Mohalla Sara Khirmi, the one at a distance of 1½ miles from the other. I am the President of the Palkikhana Sabha.



Q. Are they both Digambries' Jain Sabhas ?

A. Yes.

Q. Is this your personal opinion or was this placed before the Committee of the Sabha ?

A. This is the Sabha's opinion.

Q. I take it that you agree with this opinion.

A. Yes.

Q. Do you really believe that a girl of 12 is good to be a mother ?

A. She is in the way of being a mother.

Q. You say puberty is a sufficient qualification for being a mother. Supposing a girl gets puberty at 9 or 10 do you think she will be good enough for motherhood ?

A. No, not so early. Not before 12.

Q. Is that opinion of yours based on any medical authority or only on custom ?

A. Also medical authority. In Granth Bhav Prakash, page 14 and shloke 1 and 2, it is said that a woman gets menses from 12 to 50 years of age.

Q. Is that the authority ?

A. Yes.

Q. You have said that if under law she is to be married at 14 or 16, it is possible she may lose her family respect, the preservation of which is most important at all events. Do you think that girls are spoiled generally between 12 and 16 ?

A. It is possible. There is the danger.

Q. Are there many women who become widows before the age of 12 in your caste ?

A. There are.

Q. Are girls generally married in your community before 12 ?

A. Marriage is performed before 11 or at an earlier age as may be convenient to the parents and Goana is performed after she has attained the age of 12.

Q. How many girls are there in your community who have become widows between 12 and 16 ?

A. I cannot give the correct number, but there are a few.

Q. What is the Jain population ?

A. About 250 persons in Mohalla Palkikhana and about 4 or 5 hundreds in the other Mohalla.

Q. How many women are there in these 250 persons who became widows between 12 and 16 ?

A. Very few, about 8 or 10.

Q. And in the other Mohalla ?

A. I am not certain of that.

Q. Whatever their number, do you think there is any risk of their losing their character ?

A. There is the possibility.

Q. Do you find a great deal of scandal about these girls between 12 and 16 who have unfortunately become widows ? Do people talk about them ?

A. They talk about their character and they try to make them good.

Q. What is your idea about powers to the Panchayet ?

A. There should be caste panchayats who should decide all questions relating to marriage including the question of age at which a boy or a girl should be married. They should have complete discretion regarding these matters.

Q. Supposing they allow the marriage of a girl of 5 or 8, would you object to that ?

A. But the Goana cannot be performed before 12.

Q. You want that the panchayat should have the sole discretion on the question of marriage ?

A. Yes.

Q. If Government enacts a law that marriages of girls below a certain age say 14 should not be performed, how will the Jain community take it ?

A. When it is made a law, the Jain community will take it best of all.

Q. Are there any cases in your community where girls of 12 have been married and they have become mothers at 13 or 14 ?

A. I know of mothers at 14 and above that. There are no mothers below 13.

Q. Are there many girls between 13 and 20 that become weak or die in confinement in your community ?

A. Very few.

Mr. Bhargava : Is there an All-India Jain Sabha ?

A. There is an All-India-sabha of Degambers.

Q. Do you know whether the sabha has passed any resolution about the age of consent or the age of marriage ?

A. No.

Q. So far as mortality is concerned, statistics show that amongst Jains the mortality amongst women between the ages of 13 and 20 is far in excess of the mortality between the ages of 20 and 40. Will you not attribute this girl mortality among women to the custom of early marriages ?

A. Yes, I would.

Q. Would you say that it is a thing which ought to be combated ?

A. Yes.

Q. Do you think that if your caste panchayats fix 14 as the marriageable age people will follow it ?

A. Yes, they will.

Q. Do you think there will be any religious objection ?

A. No.

Q. What is that book ? (pointing to a book which the witness had in his hand).

A. That is Tirumanachar.

Q. Do you consider it authoritative ?

A. Yes.

Q. Is there any injunction to the effect that you ought to recite certain mantras when the first coitus takes place ?

A. Yes.

Q. Do you know those mantras by heart ?

A. No.

Q. Does Garbhadan take place amongst you ?

A. No.

Q. Do you know of any injunction in the Jain Shastras which enjoin that consummation should take place at a particular age ?

A. It requires that consummation should take place at a particular period but it does not fix the age.

Q. These injunctions generally carry no penalty. Supposing a person does not do it, he does not get any punishment. Is that not so ?

A. Yes.

Q. Is it only directory and not mandatory ?

A. It is only directory.

**Q.** I understand that your Samaj or the Jain community will have no objection if the legislature fixes the age of marriage or the age of consummation, but that in the national interests to remove so much of the misery which exists amongst girls at present, the age should be fixed, so that there may not be any child widows or early marriages ?

**A.** Yes. But at the same time I think that there should be some education to boys and girls to keep them of good character.

**Q.** Have you seen Sarda's Bill ?

**A.** No.

**Q.** It fixes the age of marriages of girls at 14 and boys at 18. Do you approve of that ?

**A.** Yes.

**Q.** Can you cite any injunction which enjoins or approves of Gaona ?

**A.** Being compelled by circumstances Hindus resorted to early marriage ; and the Gaona ceremony, which corresponds to the consummation of marriage, was performed at a particular age.

**Q.** Is there any Shastraic injunction about Gaona ?

**A.** No ; It is only custom.

**Q.** Now that the circumstances have changed and nobody wants it, is there any need for Gaona ?

**A.** No.

**Q.** Amongst those communities who do not allow widow-marriage do you think that marriageable age might be fixed and not Gaona ?

**A.** Yes.

**Q.** As regards the age of consent, will you have 15 or 16 as the age of consent ? The truth is that below 16 if a girl attains motherhood, it is injurious to herself and her progeny. Would you therefore like to fix the age of consummation at 16 ?

**A.** I would fix the age for consummation at 15 and the age of marriage at 14.

**Q.** You speak of the local panchayats. There are some places in which there is often only one Jain. Do you think that in such cases this system of local panchayats will not work ?

**A.** In that case the man should come under the panchayat of the nearest town.

**Q.** In some provinces there is only one member of the community. In those cases would you like that they should be governed by their All-India organisations ?

**A.** That is better.

**Q.** Do you not think that in some communities it will be rather difficult to have an agreement about age ? The panchayats themselves might be misguided in the same way as the whole Hindu community was misguided till now.

**A.** I think the Panchayats will bring the people to the right path.

**Q.** Have you ever asked the women in your Mohulla as to what age should be fixed for marriage ?

**A.** If marriage and Gaona are performed at the same time women will agree to 14 and 15 for marriage.

**Q.** Then if the Legislature pass this law it will be agreed to by you.

**A.** Yes.

**Maulvi Muhammad Yakub :** You say that if a girl is not married before 14 or 16 she is liable to lose her family respect. Is that so ?

**A.** It is possible.

**Q.** Is the case the same with widows between 14 and 16 ?

**A.** Yes ; because they have no husbands.

**Q.** Personally would you or would you not like that there should be some provision which will minimise the number of widows between 14 and 16 ?

**A.** The reply to this would be very long. If I am allowed to explain in vernacular I would do so.

**Q.** Is widow marriage allowed in your caste ?

**A.** No.

**Q.** You say that the Panchayats should decide questions about marriage. Would you also give to these panchayats authority to punish offenders like any other court of law ?

**A.** The panchayats should only bring the cases to the notice of the courts and the courts will punish the offenders.

**Q.** Do you mean then that the right of complaint should be given to these panchayats instead of to individuals ?

**A.** Yes.

**Q.** Will your community object to any legislation by Government relating to matrimonial matters ?

**A.** No.

**Q.** You said that early marriages were adopted by the Hindus because there was danger in the days of Muhammadan rule. Now that that fear is no more, would you advocate that marriages should take place after the girls have reached maturity which according to law is 18 ?

**A.** No ; I would have them at 12, 13 or 14.

**Q.** Would you agree that marriages should now be performed at the age at which Gaona was performed in those days ?

**A.** Yes.

**Q.** Can you quote authority from any history to the effect that unmarried girls were taken away by Mussalman rulers in India ?

**A.** I cannot give you any name just now.

**Mr. Mitra :** What age would you fix as the age of consent in the case of girls who are raped by persons, not their husbands, when they are abducted or seduced ?

**A.** The age should be the same as in marital relations.

**Q.** In marital cases the cohabitation is between husband and wife. But in the extra-marital case the man is a stranger. In such cases would you not fix a higher age for intelligent consent, considering that the girl will not be able to understand the consequences of her consent ?

**A.** I think there ought to be no difference between marital and extra-marital cases.

**Q.** Are you aware that the age of majority is 18 years ?

**A.** Yes.

**Q.** Under 18 therefore girls cannot dispose of property. When that is so, do you think they can dispose of their persons ?

**A.** I think when a girl of 14 or 15 wishes to cohabit with a man no law is required for that.

**Q.** Do you think, in olden days girls were married before they became 'Rajaswala' ?

**A.** I have not read about it.

**Q.** What was 'Swayamvara' ?

**A.** Selection of the husband by the girl herself.

**Q.** At what age can a girl select her own husband ?

**A.** There is nothing mentioned about it in the Shastras.

**Q.** What is your idea ?

A. When she is a major. She can select only when she is educated.

Q. Then in olden days girls were married when they were majors, don't you think we ought to adopt the same custom again ?

A. Yes.

Q. If for the sake of education a girl is married late you will have no objection.

A. No.

**Written Statement, dated 18th August 1928, of Mr. GIRI LAL JAIN,  
Secretary, Jain Sabha, Meerut.**

1. Yes.

2. We are of opinion that there should be an advancement on the present law. The age of consent in case of marital state should be fourteen years, and outside the marital state it should be sixteen years. Our reasons for the same view are as follows :—

(a) In the case of married girls, the age of consent being raised to fourteen years—

(i) Will have a very salutary effect on the health and physique of the girls and their children,

(ii) it will check maternal and infantile mortality,

(iii) girls will get time for their intellectual and physical development.

(b) The raising of age to sixteen years in case of unmarried girls—

(i) will check crimes of seduction and rape,

(ii) will be effective in decreasing the number of mercenary girls and prostitutes,

(iii) will greatly help the moral advancement of the people.

3. The number of seduction cases in this part of the country are frequent, though the number of rape cases are not so but in the majority of seduction cases the offences of rape is very often committed. The amendment of 1925 in this direction has very little succeeded in preventing and reducing cases of rape and seduction of girls for immoral purposes—outside the marital state, as the difference in ages of 12 years and 14 years was not enough to be properly appreciated and so the offenders very often succeeded in avoiding the consequences of their crimes. If the age of consent is raised to 16 years it will certainly be more effective in preventing the rape and seduction cases.

4. The reply is in negative. To make the law effective in all these cases legislation on the model of Mr. Sarda's Bill is very necessary.

5. The usual age at which the girl attains puberty in this part of the country is not below fourteen years. It does not differ in different castes and communities but it does differ in different classes such as educated, cultivating and labouring classes.

6. Cohabitation in this part of the country is not common in any class or community in case (3) i.e., before the girl completes 13 years. It is common among the educated classes in case (2) and among the less educated and labouring classes in case (1) and (2). Only the cases under (3) come to Court.

7. We do not at all attribute the practice of early consummation of marriage before or after puberty to any religious injunction. The Jain religion does not enjoin that the consummation of marriage should take place before or at puberty.

8. Yes. The Gona ceremony in this part of the country coincides with the consummation of marriage and is not anterior to it. Among the educated classes the 'Gona' is generally performed after the attainment of puberty and among other classes it may take place before puberty.

9. We do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify the consummation of the marriage. In our opinion physical development to be enough to justify the consummation of marriage without any injury to her health or to her progeny is at least two years after the attainment of puberty.

10. Sixteen years. Otherwise she would not duly realise the consequences of cohabitation.

11. Owing to the prevalence of child marriages and early cohabitation such cases are so numerous that it is difficult for us to give any concrete example with detail.

12. Yes. We do certainly consider that early consummation of marriage and early maternity are responsible for all that evil.

13. Yes. There has been a development of public opinion in this part of the country in favour of an extension of the age of consent but it is mostly confined to the educated people.

14. No. Now they do not generally favour early consummation of marriage for their children.

15. Yes. There have been difficulties in determining the age of girls in connection of offences under Sec. 375 and 376 I. P. C. In our opinion to minimise these difficulties (i) the age of consent should be raised (ii) the examination of age of girls by the medical expert should be on *surer* method than at present existing (iii) the evidence of the medical expert should not be given so much weight so as to consider it as the conclusive proof of the girls' age but other independent evidence should also be looked to.

16. Yes. If the age of consent within marital state and outside marital state be raised to fourteen and sixteen years respectively difficulties and margin of error would be materially removed and minimised in determining the age.

17. Yes. In the case of marital offences between thirteen and fourteen years, in our opinion, the punishment should be imprisonment of either description with or without fine. In other cases we propose the same as it is at present.

18. We do not propose any change in the procedure of trial. It should be as it is at present.

19. We can not suggest any safe-guard beyond those existing at present.

20. In our opinion the legislation fixing the minimum age of marriage will be more effective than the penal legislation fixing a higher age of consent for marital cases. This would be in consonance with public opinion in this part of the country.

21. As the country is inhabited by people professing different religions and belonging to various castes and creeds having divergent opinion, it is well nigh impossible in our opinion to secure the object in view by solely relying on the progress of social reform by means of education and social propaganda. So we would prefer to rely on the strengthening of the penal law to secure the object in view.

**Oral evidence of Mr. GIRI LAL JAIN, Secretary, Jain Sabha, Meerut.**

(Delhi, 10th October 1928.)

*Chairman* : How long has this Sabha been in existence ?

A. 10 years.

Q. What is the membership ?

A. 50.

Q. I understand that this is the considered opinion of the whole Sabha ?

A. Yes.

**Q.** In para. 4 of your answer you say 'you want legislation....apart from Sarda's Bill.' Have you any suggestions to make the present law of the age of consent effective?

**A.** We have given that we want both.

**Q.** In order to make the age of consent law more effective as it is at present can you make any suggestions?

**A.** It should be raised to 14 years in marital cases. Whether Sarda's Bill is passed or not there should be advancement in the present state of the law.

**Q.** Do you think the mere raising of the age from 13 to 14 within marriage will make it effective?

**A.** It depends on the procedure of trials.

**Q.** Should the procedure be different?

**A.** There should be more careful registration of births.

**Q.** Do you think the law is known amongst the people?

**A.** So far as my Sabha is concerned they do not generally know the law.

**Q.** Is what you say in para. 5 quite correct that girls do not attain puberty before 14? Is it for the Jains or for all communities?

**A.** It is for all communities.

**Q.** Do you think that amongst the educated classes it is sooner or later?

**A.** Among them it is later.

**Q.** What is the marriage age?

**A.** 14.

**Mrs. Beadon.** Can you give us any details of any cases in which early cohabitation has been injurious?

**A.** No.

**Mr. Mitra.** You are in favour of marriage legislation?

**A.** Yes.

**Q.** What is the marriage age that you suggest?

**A.** I suggest 16 for girls and 18 for boys.

**Q.** You also suggest 16 years as the age of consent even in extra-marital cases. Is that the minimum?

**A.** Yes.

**Q.** Girls being less educated and illiterate require a higher age to give their consent in extra-marital cases. Don't you think so?

**A.** The age of majority according to the law is different but in the case of physical development the age is different.

**Q.** Don't you think that the age should be higher in extra-marital cases?

**A.** I do not think it will be practicable.

**Q.** Do you think there will be any opposition amongst the people even in extra-marital cases when the girls are seduced?

**A.** We have given that in extra-marital-cases it should be 16.

**Q.** What is your personal opinion?

**A.** Personally speaking I am of opinion that it should be raised as high as it can be.

**Q.** What then should be the age in extra-marital cases?

**A.** Personally I think it should be 20.

**Q.** You do not propose any change in the procedure of trials?

**A.** No.

**Q.** We have been told that the paucity of cases coming to court is due to the fact that people are reluctant to bring these cases. Don't you think we should provide camera trials?

A. There will be no harm if it is adopted.

Q. It has been suggested that in marital cases where there is no physical injury to the girl the punishment may be confined to fine only. Do you support it?

A. No.

Mr. *Yakub* : In answer to Question No. 3 you say that seduction is very frequent in your part of the country. Can you give us any reason why it is frequent?

A. I am not able to give any reason.

Q. In Question No. 15 you say that evidence of medical experts should not be given so much weight as to consider it a conclusive proof of the girl's age. What other method would you suggest of ascertaining the girl's age?

A. I wish there should be a regular registration of births. It is done in municipalities but not in villages. Chowkidars are very careless and they are uneducated.

Q. What method would you suggest to improve it?

A. The parents should register in tahsils or with patwaris.

Q. Do you know that when births are registered names are not given. How will you ascertain the particular age of a girl if name is not given?

A. Other evidence and the local evidence.

Q. Will it not be proper if names of the girls and boys are also given under the rules?

A. It is right but the difficulty is that some parents do not name their children at the time of birth. Sometimes names are not given for one year.

Q. Is it not a fact that names are usually given after six or seven days?

A. Yes.

Q. Will it not be proper to have the name filled in the column left blank for the purpose?

A. It will be effective.

Mr. *Mudaliyar* : Are you speaking on behalf of the Jain community alone or are you speaking about the population of Meerut generally?

A. I am speaking particularly of the Jain community.

Q. With reference to the Jains—is there any religious injunction as regards the age of marriage?

A. No.

Q. You say that usually girls do not attain puberty below 14 years. They attain puberty generally at or after 14 and you also say that at least 2 years after the attainment of puberty they may have consummation of marriage without injury to their health or to their progeny. How do you suggest 14 years as the consummation period? You do not allow the 2 years period which you say is good for the girl. Logically you should fix it at 16?

A. Yes.

Q. In para. 9 you say we do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. When you make that recommendation then why do you suggest that the age of consent in marital cases should be 14?

A. Marriages are generally performed at 14 years and there is goana ceremony after one or two years.

Q. Therefore I understand your fixing the age for marriage; that will provide two years. Would you fix the Age of Consent at 14 also?

A. We considered this point. Supposing the legislation on Sarda's Bill is going to be passed it is not necessary that Age of Consent should be raised to 16 years.

Q. Neither is it necessary to fix it at 14; That would not do any good to you. From the medical and health point of view it is necessary to protect the mother



and the child. I want you to reconsider the position and tell me whether you consider 14 as a reasonable age or would you like to fix it at 16 ?

A. Reading both these paragraphs I consider it must be 16.

Q. In reply to para. 6 you say that cohabitation is common soon after puberty among the educated classes and among the less educated and labouring classes it is common before puberty or soon after puberty. What do you call the less educated and labouring classes ? Are you talking of the Jains or the Hindus ?

A. I am talking of all.

Q. So far as Jains are concerned there is no caste ?

A. There are and labouring classes do not pertain to any particular class.

Q. Do you think this practice is common among them ?

A. Yes.

Q. What would be the age of consummation among them ?

A. I think it is 14.

Q. Why do you think consummation takes place before puberty if the age of puberty is 14 ? Is there a ceremony of goana among the labouring classes ?

A. Yes.

Q. What period after marriage this ceremony takes place ?

A. 5 or 6 years.

Q. When does the marriage takes place ?

A. At 7 or 8.

Q. What reason have you to think that cohabitation takes place before puberty ?

A. I am unable to give reasons.

Q. You have now agreed that in marital cases the age should be 16. Naturally you would fix the age in extra-marital cases above 16 ?

A. Yes.

Q. In answer to Question 21 you give one reason why you would not rely on social reform. Am I right in understanding your answer in this manner. India consists of a number of races, Hindus, Mussalmans, Indian Christians, Parsis, Jains, etc. Social reform can only exist among one class or one race at a time and cannot proceed simultaneously among all. As this evil is prevalent among all communities social reform is not active in all communities but by legislation it will be active in all communities. Therefore legislation will be preferable ?

A. Yes.

Mr. Kanhaiya Lal : Where do you ordinarily reside ?

A. In Meerut but before that I was in rural areas.

Q. Are you doing any business in Meerut or do you belong to any profession ?

A. I am a Mukhtiar.

Q. You have modified your statement and said that now you recommend the age of marriage to be fixed at 16 so that a girl may be fit for consummation. Do you think the age of 16 will be generally acceptable to the Jain community ?

A. I do not think. We have considered this point and have come to the conclusion that 14 is the proper age.

Q. Will it be acceptable to the Hindu community ?

A. Yes.

Q. What are the reasons which make the Jain community oppose it ?

A. I am in favour of 16 so I cannot support reasons which they have given.

Q. Do the Jain community recommend it as a first step ?

A. Yes.

Q. You have told us that the marriage among the Jains generally takes place at 14 and you have further said that goana generally takes place after 2 years. Even

now the consummation does not take place till 15 or 16 among the Jains. If that is the case why don't they favour 16 ?

A. The conservative people do not like to take a forward step.

Q. What is the idea of Jain community as to making the marital offence cognizable or non-cognizable ?

A. Non-cognizable.

Q. If you make it non-cognizable whom would you give the right of complaint ?

A. To the girl herself or her parents or guardians.

Q. Supposing they take no action. Would you further authorise any individual ?

A. No.

Q. You think that it will be liable to abuse ?

A. Yes, it will lead to ill-feeling.

Q. You are probably aware that there is the law of the Age of Consent fixing the age at 13 and we get very few cases brought to light. If this is the case would it be sufficient to give the right of complaint to the girl or her parents who may not be interested in coming into direct conflict with the husband or his party ?

A. Their interest is with the girl.

Q. But the girl will suffer if the husband is sent to jail and they will not therefore make any complaint ?

A. It should not in any case be given to anybody else.

Q. Have you got a Jain panchayat in your city ?

A. No.

Q. But there is everywhere a panchayat in charge of your temples ?

A. There is a certain man who is in charge of the temple.

Q. Would you like to give this power to a panchayat or to social reform organisation in the country or to a Sabha like that of yours ?

A. No.

Q. Why not ?

A. All organisation depend on constitution. Possibly and more probably some people who have some ill-will will lodge a complaint.

Q. But there is less danger of abuse of power when a collective body is given that power ?

A. Yes.

Q. Would you give the power to all collective bodies like the Jain Sabha or the Hindu Sabha to make complaints ?

A. If in any case such power is given to any private bodies it should be given to such bodies.

Q. Can you make any suggestion to make the law effective ?

A. I have already said that the age should be properly registered.

Q. If there is a marriage law would you be in favour of registration of marriages ?

A. Yes.

Q. If there is a law fixing the Age of Consent would you still be in favour of having a system of registration of marriages where records of marriages might be kept ?

A. Yes.

Q. You have said that in non-marital cases the Age of Consent may be raised to 20.

A. That is my personal opinion.

Q. Don't you see that there is a danger of young boys of 17 or 18 falling a prey to the temptations of immoral girls or daughters of fallen women ? The result will be that the women will escape but the boy will be liable to punishment.

A. I do not think it is a hardship. The moral standard of the people should be raised and there should be some check on the boys not to have such intercourse.

Q. You would do nothing to prevent cases of hardship of that character ?

A. No.

Q. Can you keep the daughters of prostitutes untouched up to 20 years ?

A. If such a legislation is made they will have to remain untouched.

Q. Will it be effective in such cases ?

A. Yes.

Mrs. Nehru : In para. 3 you say that the age being 13-14 the offenders generally escape punishment. In what way you think they escape consequences ? What is the difficulty in bringing them to book ?

A. We have stated that the law of 1925 was not effective because the age is so little.

Q. Can you tell me whether people are generally aware of this law at all.

A. Generally they know but they do not know the age which is fixed by the amendment.

Mr. Bhargava : Is there any widow remarriage among the Jains ?

A. It is not prevalent but in some cases social reformers have brought it out.

Q. If the age is raised to 16 as you think personally, do you not think the whole society will be saving a good many girls from becoming widows ?

A. Yes.

Q. If this law is passed do you not think that any sort of reluctance on the part of Jains would be almost negligible ?

A. Yes.

Q. Do you not think that the general interests of the society will be served if the right of complaint remains in regard to these offences as it is ?

A. No.

Q. Will you give reasons ?

A. I doubt the honesty of the people because they misuse the power.

Q. Would you like that a sub-committee of the municipality or of the district board may exercise such powers ?

A. No.

Q. Now at present under Section 476 a magistrate is entitled to initiate prosecution on his own knowledge. Would you like courts to be empowered to initiate prosecutions on their own information ?

A. Yes.

Q. Would you like that patwaris, lumbardars may be enjoined upon by law to make a report of any cases in which there is a breach of Marriage or Consent laws ?

A. I think if that procedure is adopted the same thing will take place because it will be cognizable.

Q. The case will not be cognizable ; they will have no authority but they will inform the district magistrate who will take such action as he considers suitable.

A. I do not think it will be desirable.

Q. You think wrong information will be given ?

A. Yes.

Q. Do you think if marriage law is enacted there should be a provision that within one year there can be prosecutions ?

A. Yes.

Q. Supposing a person marries a boy or a girl of tender age it will be an offence. If it is imposed upon him to report those cases to the registering officer do you think he will go and give the correct age ?

A. He will give a wrong age.

Q. When the date given in the register of births is presumably correct then the court will be furnished with another copy in which the age is wrongly given. Do you not think there will be a conflict of entries and in many cases injustice will result?

A. The birth date will be more accurate.

Q. If the birth date is more accurate there is no reason why there should be registration of marriages?

A. So far as breach of these laws are concerned there should not be.

Q. Do you not think that if you fix the age in extra-marital cases at 18 or 20 you will be encouraging matrimony?

A. Yes.

**Translation of Vernacular Written Statement, dated 13th August 1928,  
received from the Office of Shoba-i-Tabligh and Jamiat-ul-Ulema,  
Meerut City.**

The questions that you have published to invite public opinion on Mr. Sarda's Bill for the prevention of infant marriage seem to be, as far as we can comprehend, the outcome of much legal sophistry and quibbling.

It appears that an endeavour has been made to draw inferences from false and confounded premises. Any how in cognisance of the fact that as a matter of principle only three questions deserve notice and consequently others being irrelevant we confine our answers to Questions Nos. (1), (7) and (21).

(1) Sections 375-6 of Indian Penal Code do not restrict the Age of Marriage but the Age of Consent and consummation which only accordingly is cognizable by law. Islamic theology is not quite definite upon fixing the age of marriage—the Parties Concerned may or may not have attained to maturity. Marriage depends upon the free choice of the person if he or she is mature otherwise the sanction of the legal guardian becomes necessary. In fact the Islamic Code of Theology did not require that the Age of Consent should be fixed by law for the very simple reason that according to Islam adultery whether by consent or by force is a crime and therefore cognizable by law. Thus at no stage is a woman suffered to prostitute herself.

On the other hand in Europe, particularly in England, a woman is suffered to prostitute herself and is beyond the reach of the hand of law. Only rape is looked upon as a crime and therefore prohibited by law.

Legislation for the Age of Consent would have been void if India had been under Islamic Government. It appears to be one of the benefits conferred upon India by the British Raj that so much scope is afforded for prostitution under the cover of legislating the Age of Consent. Thus the legislation of the Age of Consent and fixing the age of marriage are poles asunder from each other—the former propagates prostitution and the latter ensures chastity and purity.

7. To hasten the consummation of marriage before or just after attaining to maturity is not based upon religious injunctions. The Code of Islamic Theology has set them at perfect liberty to settle individual cases according to expediency and convenience. In other words, the Code of Islamic Theology permits the consummation of marriage before or just after attaining to maturity and does not regard this deed as criminal. At this stage it ought to be plainly borne in mind that a virtuous deed receives as much notice in theology as a wicked one—we are commanded to do what is virtuous, to avoid what is profane and in sexual affairs there is no definite injunction. Just as it would be secular intervention in clerical affairs to declare legal what is forbidden ecclesiastically or to interfere by legislation in the discharge of a religious function, similarly it would be intervention in religious sanctions to penalise a deed sanctioned by religious laws or to render it a bounden duty.

21. To prevent the dangers that arise from infant marriage the only possible remedy can be the education of the masses and social propaganda. In whatever people or part of the country the custom of infant marriage prevails it is the duty of the nation to arrange for the education of the masses and for social propaganda. In certain places infant marriage is common on account of expediency. Such cases do not deserve very serious attention. But where this is due to mere blind adherence to customs and conventions what is badly required is social reform.

One simply wonders that no effective legislative effort is made to put down such heinous crimes as drinking, prostitution and gambling although they are forbidden in every caste and community. On the contrary in certain cases the laws of the country protect and even encourage such deeds. And yet in a zealous fit to put a stop to infant marriage all the prospects of the posterity are sacrificed.

We hope, Sir, that these thoughts of ours will draw your attention. The Moslem Ulemas of every shade of thought are completely in accord with our views and we herewith enclose for your perusal the verdict\* given by the Ulemas of Hindustan (*vide* "Sadaqat" of Meerut, dated August 5th, 1928).

### Oral evidence of Khalil Ahmed, on behalf of Shoba-i-Tabligh and Jamiat-ul-Ulema, Meerut.

(Delhi, 10th October 1928).

(Vernacular).

*Chairman* : How long has the Anjuman been in existence ?

A. 3 years.

Q. Was this questionnaire placed before the meeting of the Anjuman ?

A. Yes. That is the view of the Anjuman.

Q. You probably recognise that there are prostitutes amongst Mohammadans as well as Hindus.

A. Yes.

Q. Is Mohammadan population overwhelmingly large in Meerut ?

A. Yes.

Q. What is the punishment that is given according to Islamic law for prostitution ?

A. Flogging is the punishment. 100 Koras are given.

Q. Is that punishment now awarded or is that merely a dead letter ?

A. I cannot say.

Q. Is it both for men and women ?

A. Yes.

Q. Why is it not enforced ?

A. Because there is no Muslim law.

Q. Is the law enacted in 1925 looked upon by the Tabligh as an infringement of the Islamic law ?

A. Fixing of any age is against Muslim law.

Q. What is the usual age at which consummation takes place in your part of the country ?

A. I cannot say anything about it.

Q. Is slavery permitted according to Koran ? If not was the prevention of slavery against Islamic laws ?

A. Yes.

*Moulvi Muhammad Yakub* : Where were you educated ?

A. At Meerut in Imdadul Islam.

Q. Have you got a degree ?

A. Yes.

Q. In what year did you get it ?

A. In 1926.

Q. Have you read all Hadis ?

A. Yes.

Q. Does your school belong to the same school of thought as the Ulemas of Deoband ?

A. Yes.

Q. Is there any age fixed for consummation ?

A. There is no age fixed. After puberty the husband can consummate marriage at any time he likes. But before puberty there should be no consummation.

Q. What is the general age of puberty among Muhammadans in your part of the country ?

A. I don't know.

Q. Can you give us any reference in the religious books about what you have said regarding consummation ?

A. That is given in Hidai.

Q. If a law is made that there should be no consummation before puberty it will not be any interference with Koranic injunctions. Is it not ?

A. There is no harm in enacting such a law.

Q. Do you know that among Mohammadans marriages among first cousins are permissible ?

A. Yes.

Q. You know that Khalifa Umar stopped such a marriage as the constitution of the boy was not good.

A. It is not stated anywhere.

Q. Does early consummation have any effect on the progeny of the girl ?

A. Yes, it does affect.

Q. Don't you think then that protection should be given to girls ?

A. It should be.

Q. Was there any opposition on the part of Ulemas when the age was fixed at 13 ?

A. They had no knowledge. They have knowledge now and there is opposition.

Q. Suppose a man is very old and he wants to see his daughter settled in life soon in his life time. In those circumstances would you like that the girl whatever the age should be married at once ?

A. But I would not like consummation to take place.

Q. If even after puberty there is the danger of the girl's health suffering and some difficulty is anticipated at the time of child birth, would you allow consummation even at the risk of the death of the girl ?

A. Permission must be given, but the husband must use his discretion.

Q. Don't you think any law is necessary to prevent such cases ?

A. No.

Q. Have you carried on any propaganda against early marriage whether in Meerut or outside Meerut this year or last year ?

A. I cannot say.

*Q.* Is Kurbani possible in every house ?

*A.* I don't know.

*Q.* You don't know about the conditions of Meerut. How long have you been in Meerut ?

*A.* Three or four years.

*Q.* Where is your place ?

*A.* In Lucknow.

*Q.* Is Kurbani possible at every house ?

*A.* Not of a cow.

*Q.* Is that not against Koranic injunction ?

*A.* Yes.

*Q.* Did you or your Anjuman present any petition to the Viceroy ?

*A.* No.

*Mr. Mitra :* Do I understand that you are against early marriages as you are conscious of the evils of early marriage ?

*A.* I am not opposed to early marriage.

*Q.* Is it a fact that according to Islam the punishment for adultery is stoning to death ?

*A.* Yes.

*Q.* Will you be surprised to know that even in Islamic countries like Turkey there is no such punishment as stoning to death ?

*A.* May be.

*Q.* Is it a fact that punishment for theft is the cutting of man's hands ?

*A.* Yes.

*Q.* Is it enforced in any Islamic country now ?

*A.* In Afghanistan hands are cut off.

*Mr. Bhargava :* According to Islamic law the age of puberty is 15 ?

*A.* I don't know.

*Q.* Among the Muhammadans 95 per cent. follow custom and not Koranic injunction. According to Islamic injunction the wife who has got no children is entitled to the whole of the property. Is that done ?

*A.* I don't know about Punjab.

*Q.* If the age is fixed at 18 would you favour it ?

*A.* There should be no age fixed.

*Q.* Do you think that there must be some law punishing gambling ?

*A.* Yes.

*Q.* Is there any law in Koran ?

*A.* Yes. The punishment is 80 koras.

*Q.* According to Koran can the husband also punish the wife for certain things ?

*A.* Yes.

*Q.* But according to the English law you cannot even give a slap to the wife. Is it not an infringement of the Islamic law ?

*A.* It is.

*Q.* Has there been any agitation ?

*A.* No.

*Q.* Will there be any agitation if the age is increased ?

*A.* I cannot say.

*Q.* How many members are there in the Anjuman ?

*A.* About 70.

Q. Are there any Vakils and Magistrates also who are members ?

A. No. They are shop-keepers and workers.

### Written Statement of Mr. Puran Chand, Advocate, President, Arya Samaj Agra.

I am herewith submitting answers to questions received from you on the question of the age of consent. I hope if given a chance of oral examination I shall be able to throw more light on the subject. The subject is very wide and cannot be comprehensively answered in such brief answers.

In my own humble way I have been in public life for about last 20 years. I have had occasion to observe facts which throw a flood of light on such questions.

I am at present the President of the Arya Samaj, Agra—one of the most prominent Samajas in India. The said Samaj has an orphanage and a widow home working under it. For the last 18 years I have been practising as a Criminal lawyer. For about last 6 or 7 years I have been connected with the weekly paper "The Arya Mitra" published in Agra. It is one of the best Hindi weeklies in India, and is the chief organ of the Arya Pritinidhi Sabha, United Provinces, a body to which all the samajas of the United Provinces are affiliated. For the last 13 or 14 years I have been on the executive committee of the said Sabha. I mention all this in order to support the view which I have advanced in these answers. I keenly feel that such a legislation is mostly urgently needed. As a humble worker in the line of social reform I have more than once felt the necessity of there being such a legislation on the Statute book.

I have come across many cases in which ignorance could not be excused on any social or traditional basis. It could not but be considered a criminal act—a criminal act can only be put a stop to by penal legislation. I have tried my best to rescue some girls from ruin—but could not succeed.

I wish the law may come to my help.

Answers to "Question and Answer."

1. Yes, there is dissatisfaction but it is confined only to educated people of advanced views.

2. There are no circumstances which in my opinion justify retaining the law of consent as it is. Of course many new circumstances have arisen which justify making an advance on the present law.

(a) The general health of women and their physique has deteriorated very much.

(b) Education among women and girls is generally increasing though slowly. The girls recent early marriage but cannot withstand the wishes of elderly ladies in the family who are of backward orthodox views.

(c) Infant mortality is increasing. It is the duty of the state to protect the subject from such social evils.

3. Very few cases of rape have occurred in my knowledge. Seduction is rather more frequent. The amendment of 1925 has not been very effective in making improvement in the way of reducing cases of rape or the improper seduction of girls. Moreover the time elapsed has not been sufficiently long to judge its effects. It is not known amongst the masses—or even among the average class people. In my opinion any legislation which is connected with the removal of social evils and in the way of reform should be published broadcast in more ways than one—it should be published in Vernaculars which are the common medium in the province or the locality. An attempt should be made that it should reach even the hands of girls and ladies confined in the Zanana. The help of lady teachers of institutions where grown up girls read would be very useful.



4. For reason given above in answer to question 3. The amendment of 1925 has not been effective in protecting married girls against cohabitation with husbands within the prescribed age limits. The general tendency among the married girls is that they cannot dare refuse to cohabit with their husbands after marriage. They do not know if there has been any such amendment. They do not feel that they have got any power to refuse to give their consent. They are generally weak-minded enough and they cannot but yield to the wishes, say rather dictates of their husband. In order to make it effective in either of the three directions mentioned in the question regular propaganda shall have to be made with a view to educate them and strengthen their moral stamina.

It is the duty of the state who undertakes any such legislation also to arrange to make it popular and effective. Merely placing it on the statute book is not enough. Of course, the co-operation of individuals and societies who advocate social advance can be sought for and they shall only be too glad to offer it.

5. It is very difficult for a lay man to judge when a girl has attained puberty. If by puberty is meant the commencement of menses, it is generally found between the ages of 13 and 15—real puberty within the meaning of the making of a girl fit for cohabitation should be deemed to commence only 36 months after the first menstrual discharge.

Says Manu Chapter IX—90.)

Let a damsel seek a husband equal to herself in qualifications 3 years after her menstruation. As menses occur every month, there are 36 menses in 3 years, after which marriage is proper but not before.

(For detailed reference Rishi Dayanand's Satyarth Prakash, Chapter IV can be referred to).

Keeping this meaning of the word puberty in view—complete puberty is never attained before the age of 15 or 16.

It does differ in different castes, communities or classes of society.

Amongst any class such as Vaishyas—especially Agarwala who have a luxurious living, girls attain puberty earlier. It also depends upon the kind of food taken, meat eating or taking food which is "Tamsik" also have some influence. It also depends upon the custom prevailing. In my vicinity Khatiks live. They by habit give their girls in marriage at the age of 9 or 10. I personally know of some cases in which girls of 7 and 8 have been married. In such a community I have noticed that the girls begin to feel and behave like grown up women at a much earlier age. I have seen that a girl who is married attains outward puberty much earlier than one who is not married.

6. Yes it is common among the Khatiks, the Kahars and people who are called low classes both of the touchable and the untouchable type. It is also common among some kind of Vaishyas or other allied classes. Cohabitation is common among them before puberty. Before puberty I mean before outward signs of womanhood such as the development of breasts grow. There is hardly a girl who has not to undergo cohabitation before 13. I have been appearing as a Vakil in criminal cases for the last 18 years. I have never seen any such case coming to court.

The general impression is that the law or the Government have nothing to do with it—it is their social custom and nobody can interfere.

Of course, I have fought two cases amongst the Mohammedans—in which the mother tried to have the marriage of their daughters dissolved on the ground that grown up husbands forcibly tried to cohabit with their wives at a very tender age, and the lives of those wives were in risk. In one case I fully remember the opinion of the lady doctor. She gave a report that the girl had been rendered unfit for motherhood for the whole life. I myself saw the girl. She was hardly 9 or 10. After the brutal treatment of the husband she could not even walk with ease.

I also knew from personal experience cases among both the Hindus and the Mohammedans in which girls of very tender age have become so terrified of their

husbands that they refuse to go to their husbands' home even though forced by their parents or guardians. Their condition is indeed very pitiable, but up till now there has been no help available. If I am given a chance of oral examination I can give details though I would not be able to disclose names and identity.

7. Yes the practice of early consummation of marriage among the Hindus of the Puranic type or who wrongly call themselves Manatan Dharmis is due to religious injunction. Of course no such injunction is found in the old and ancient real religious scriptures. These are found in more recent works such as the "Parashari" and "Shigrapodhti." They mean 1. A girl is called *gourie* in her 8th *Rohini* in her 9th and *Kanya* (maid) in her 10th year and *Ragaswala* menstruant after that age. 2. If she is not given away in marriage in her 10th year of age, her mother, father and elder brother go to hell on seeing her in menses. A similar rather worse authority of the extempore. Brahman Purana is also quoted. For further particulars refer to the 4th Chapter of the Satyarth Prakash by Rishi Dayanand

8. Garbhadhan ceremony and Gona are quite distinct. Garbhadhan ceremony is undergone for the sake of procreation of children. It is a very sublime Sanskar and is unfortunately very little in vogue these days. "Gona is very common." It is a ceremony undergone some months or years after marriage ceremony is celebrated. In some communities it means some check upon the consummation of marriage or cohabitation. The married girl would not be sent to the home of the husband unless this ceremony is undergone. In other communities this is only a formality which is completed along with marriage or very soon after it. Advanced communities also like to celebrate it after the attainment of puberty.

9. I have partly answered this question when answering question No. 4. If by puberty is meant the commencement of menses—as it ought to mean, maturity should be deemed complete 3 years after it according to the authority of Manu and other ancient law givers. Expert medical opinion also favours this view.

10. Not before 16. 16, if she is fairly educated.

11. I have come across many such cases. There was a girl in a family remotely connected with mine. She was given in marriage when she was hardly 10 or 11 a very tender girl. She had abnormal development soon after marriage. She was alright only for some 10 or 11 months hardly a year. She began to suffer from Tuberculosis of lungs and died after suffering for some months. The fate of her elder sister was similar. I know of some girls who are married at a very tender age—they always suffer from some disease or other. They can hardly become mothers. If they give birth to children, the babies are very weak and die young generally in infancy. Tuberculosis is very common among women between the ages of 15 and 25, it is due to early and excessive cohabitation. It is also a common experience that girls who have to undergo cohabitation at a tender age their lust is seldom satisfied. They generally become of very loose character. Being at present the president of the local Arya Samaj and having held various important offices in the Samaj for the last 18 years I have been in close touch with the working of the widows home and orphanages. I have seen girls of 12 or 13 coming in the home. Suffering from some dirty sickness and still insisting for their remarriage as early as possible. Really speaking such women and girls are the curse of the modern day Hindu society. The Mohammedans too are not free from this evil.

12. I do consider all reformers and all well wisher of India are agreed that high maternal and infantile mortality are due to early consummation and early marriage.

13. I have partly answered this question in answering Question No. 4. There has been some development amongst the educated classes, others know very little about the amendment.

14. Yes, old ladies of the orthodox type do insist on the early consummation of marriage of their children. They are anxious to have grandsons and grand daughters in their lap. They do not care or are capable of caring what would be the fate of their children. In most cases they consider unmarried daughters a burden. They

want to unload themselves somehow or other. I know very highly educated people who are influenced by certain lectures and fall victim to such social evils. The voice of a social reformer though a great help is slow to reach the closed doors of the Zanana. The fear of law must be a great help in bringing about reform and advancements in this direction.

15. Yes. Generally reliance has to be placed upon medical opinion which is very uncertain. I know from my personal experience as a criminal lawyer that medical officers of very high position have been influenced to give wrong opinion. In most cases they have not been able to form a correct estimate.

One measure that I would suggest is to improve the working of the department whose function is to register birth. Local Self-Government Department should be directed to bring it on a more organised basis. Without this we shall have to be content with the evidence of the doctor and the parents of the girl.

16. I do not think it would make much difference.

17. Practically there must be some difference. Marital offences cannot be judged from the same standpoint. But I would like to see the law amended as at present in force as regards the amount of maximum punishment that can be awarded in marital cases. I would like to see it raised to 5 years—50 per cent. leniency is enough in such cases as compared with extra-marital offences.

18. I have no further suggestion to make.

19. Yes.

20. I would prefer legislation fixing the higher age of marriage. After marriage such complication arise that fixing the higher age of consent becomes futile and unpracticable. There can not be much checking. Orthodox public opinion would oppose to some extent. I cannot say which of the two would be more opposed.

21. I would rely on both, penal legislation must co-operate with social reform. Have we not seen how sati and infanticide were abolished by law? Early marriage must be put a stop to by legislation. Ignorance can baffle with the harangue of social workers to a great length but is always afraid of law. Legislation permitting widow marriage can never be quoted as an instance of the futility of the legislation in the matter of social reform. The latter is only a permissive legislation. It has no terrifying sanction behind it.

Penal legislation is always of a different type. It makes it penal to do certain things. The people are afraid of the consequences and must enforce it.

### **Oral evidence of Mr. PURAN CHAND, Advocate, President, Arya Samaj, Agra, and Honorary Superintendent, The Arya Mitra.**

*(Delhi, 11th October 1928).*

*Chairman :* Are you the President of the Arya Samaj, Agra ?

A. Yes ; I am also Honorary Superintendent of the weekly paper Arya Mitra.

Q. Are you connected with any other social reform institutions ?

A. I am a member of the executive committee of the Hindu Sabha.

Q. Are the views given in the memorandum your personal views ?

A. Yes.

Q. What is the exact reference you have made in the following :—"I have come across many cases in which ignorance could not be excused on any social or traditional basis. It could not but be considered a criminal act—a criminal act could only be put a stop to by penal legislation. I have tried my best to rescue some girls from ruin—but could not succeed."

A. There were some minor girls of 8 or 9 that were being given in marriage to elderly people and I and some others tried to induce the parents not to do so. I mean to say that if we had a sanction behind us we could have been successful.

Q. Do you mean by "rescuing" preventing children from being married early and not preventing them from getting into bad ways?

A. I mean preventing child marriages only. There were cases of seduction too. I am President of the Widows' home and have come across seduction cases too. There also some difficulty arises.

Q. Are you talking of recent times?

A. Yes; within five years.

Q. Do you think that if the law were widely known it would be effective?

A. It would be effective.

Q. That it is not known you put as one of the causes for its being ineffective?

A. Yes.

Q. You refer to the Khatiks and say that they give their girls away in marriage at the age of 9 or 10. Is that so?

A. Yes.

Q. Does consummation follow immediately?

A. Consummation takes a year or six months after marriage. It sometimes takes place within 12 or 13. And they feel it derogatory to their position if they are made to wait till a later age. They say it is a custom of Biradri.

Q. In para. 6 you say that cohabitation is common before puberty amongst the Khatiks, the Kahars and also the Vaishyas. Which class of Vaishyas do you mean?

A. The Agarwala, Paliwals and some other classes.

Q. Does consummation take place generally before puberty?

A. The period between marriage and consummation is not great though a system of Goana exists.

Q. Are there many cases below 13?

A. Amongst the Vaishyas the cases are not as many as amongst the Kahars, but there are cases.

Q. On page 6 you say that it is also a common experience that the girls who have to undergo cohabitation at a tender age their lust is seldom satisfied; they generally become of a very loose character. Can you mention any instances?

A. I have seen this in connection with the widows' Home. Supposing the husband dies or deserts the girl or there is a rupture of relation the girl is sent to the Home. I have seen in the case of girls who have had cohabitation at a tender age a tendency to be of loose moral character and they do not stay in the Home for more than a very short period. They would insist on their being married at once. In the case of elderly ladies we have found that they are not so very impatient and we have been able to get them good husbands.

Q. In answer to Question 20 you say that you would prefer legislation fixing the higher age of marriage. Besides the reasons given by you in that paragraph can you give us any reasons? You have also said that "after marriage such complications arise that fixing the higher age of consent becomes futile and unpracticable; orthodox opinion would be opposed to some extent. and that, you cannot say which of the two would be more opposed: what do you mean?

A. I mean marriage is a thing which is known very easily whereas consummation is difficult to trace.

Q. In paragraph 6 you refer to two cases amongst Muhammadans. Was it recently?

A. I remember one case was about 6 years ago, the other case was about 4 years ago.

**Q.** You have given two instances where girls had been consummated before puberty. Is your impression that such cases are common ?

**A.** Very common.

**Q.** Do you know of any other cases besides the ones you have mentioned in which girls were married and had consummation at 11 or 12 ?

**A.** Yes ; I remember a case. A Hindu girl belonging to the midwifery class was married at the age of 5 and the Gaona ceremony was performed when she was 7. The girl said that there was consummation after two or three years because the parents of the boy wanted her to give birth to a child. The girls' parents took her away from the husband and the father of the girl came to me to claim maintenance from the husband. I saw that on account of early consummation the girl had grown lean and weak. There might have been internal disorder also, but I did not know.

**Q.** To what class of society did she belong ?

**A.** She belonged to a well-to-do class, not as regards status in society, but in regard to wealth. She belonged to the Daiwacha class.

**Q.** Can you tell us from your experience if you have come across any instance of a girl being forced by her parents to have consummation of marriage before puberty ?

**A.** Yes ; a girl was married to a Punjabi gentleman in the Gwalior State. The husband treated the girl brutally. The girl was 11 or 12. Then she came back to the mother's place. The husband came back to take her away. She was afraid and said she would commit suicide. The father sided with the husband and wanted to send the girl back. The result was the mother ran away with the girl to Agra. I knew that case and I suggested that the girl should be sent away from Agra as the husband would come and trouble us. I suggested that she should be sent to a school in Bareilly. We all made it a point not to disclose the secret. The husband came to Agra but no clue was given about the girl. The girl received her education at Bareilly and she is now married to a Doctor in Agra. She is about 20 or 22 years of age now. I do not know what has happened to the husband.

**Q.** How was she married again ?

**A.** The marriage was arranged somehow or other because the girl could not remain unmarried.

**Q.** When did this happen ?

**A.** About 5 or 6 years ago. There was another case in which the girl refused to go to her husband and the reason was similar.

**Mr. Bhargava :** In the case of intra-marital offences would you make it obligatory on certain people to report ? Would you include it amongst the offences which come within section 44 of the Criminal Procedure Code ?

**A.** Yes.

**Q.** Would you further include under section 45 such cases and make it obligatory on every village headman, etc., to report such cases ?

**A.** That will be of greater help.

**Q.** You cited the case of a girl who was ill-treated by her husband and who had to be remarried. Considering such cases, would you like that the present law of guardianship, by which the husband is the lawful guardian of the girl till a certain age, may be changed and the guardianship given to the parents say up to the age of 16 ?

**1.** In my opinion that will not be practical. There are other allied questions also which have got to be considered. I think that instead of changing the law of guardianship we can change the law of marriage.

**Q.** At present the husband is entitled to the guardianship of his wife and he can enforce his right to it against the parents of the girl. If you want to make the parents liable as they are already liable under the penal code as abettors of the

offence, how can you do so when the parents cannot prohibit the girl from going to the husband's house ?

A. At the same time consummation cannot take place without the consent of both the parties. If consummation takes place, the parents will be only abettors, but the husband will be the principal offender. There may be extenuating circumstances in favour of the parents in such cases and they may not be punished at all.

Q. Are you not therefore in favour of any change in the present law ?

A. The present law does require some change. If the father and the mother of the girl sent the girl to the husband's house it shall be presumed that they were parties to the ceremonies, that is, if the consummation takes place at an early age, it shall be presumed that they knew it.

Q. If they had sent the girl for Gacna they are liable, but supposing the girl is sent on other occasions and cohabitation takes place ?

A. In that case there will be no question of abetment.

Q. Are you satisfied with the present law of abetment so far as the offence is concerned ?

A. Yes.

Q. You propose a punishment of 5 years in marital cases. May I know your reasons ?

A. If the girl is given in marriage and it is celebrated, those who gave the girl in marriage are partly responsible for having brought about this state of affairs ; therefore there must be leniency on this ground. Had there been no marriage there would have been no consummation. But after the marriage there is the temptation to the husband. You might therefore exonerate him.

Mr. Bhargava : May I understand that you are in favour of first publishing the law broadcast and that unless and until the people know this to be a crime you are not in favour of enforcing this law ?

A. It should be enforced from the very beginning. It must be enforced strictly. Punishing the persons would in itself mean publication. It would teach a lesson to others. Exemplary punishment should be given in one or two cases. It would be better if in two cases exemplary punishment is given than 10 cases being tried and no or nominal punishment being given.

Q. In the course of your answer to Question No. 6 you have said, the general impression is that the law or the Government have nothing to do with it—it is their social custom and nobody can interfere. In a criminal offence it is generally the criminal intention that is responsible for the punishment. If this impression is there and people think that they have a right to consummate marriage and the Government has failed to do its duty towards the people, do you still think that they should be punished ? It is a wrong mentality and you want to punish them for their ignorance ?

A. There are many things which contribute to this sort of feeling. The man himself is also responsible. Ignorance is a crime to a certain extent.

Q. The State must see that the people should not remain ignorant. When the State has not done its duty, do you think that it would be justified in attaching a penalty to a state of things which has been brought about by the State itself ?

A. Imposing a penalty is also a way of teaching. This is a correction as well as a punishment. If there is a penalty people would know it elsewhere also that such and such is a crime and know it much earlier than by propaganda, through lectures, etc. Punish one man but give him exemplary punishment.

Q. Supposing a man gets punishment in Delhi, do you think it will have effect in Agra ?

A. To some extent. It will be in the newspapers and the people would learn about it. It will have some effect.

Q. But how many people read newspapers ?

A. The number is increasing.

Q. What is the percentage ?

A. I cannot give you a correct estimate of that, but surely during the last few years the newspaper reading public has increased double. There are libraries in which Hindi papers are available. These papers have become very cheap. Now you can get a paper for 6 pies. Some years back the price was exorbitant. There were not so many Hindi dailies.

Q. You have said in the course of your answer to Question No. 4, "Of course the co-operation of individuals and societies who advocate social advance can be sought for and they shall only be too glad to offer it." In what particular channel the Government and the social reform societies should co-operate ?

A. Firstly in making it public, secondly in inducing the public not to regard it with antipathy, i. e., everybody should take upon himself as his duty to send the information and thirdly in removing the ignorance of the people.

Q. Do you mean that the state should subsidise them also ?

A. I don't think that is worthwhile.

Mrs. Nehru : You say you know of a case in which the age of the girl was only 7 or 8 years. What was the age of the boy ?

A. I have not seen the boy. He was older than the girl and was about 12 or 13 years old.

Q. Were the parents educated ?

A. No.

Q. Were they literate ?

A. The father is literate. He can read and write.

Q. You saw the girl ?

A. Yes.

Q. She looked 7 years of age.

A. I saw her when the case came to me. I did not see her at the time of marriage. She was 5 years when given in marriage and the Gaona took place at 8 or 9.

Q. So the age of the girl was given to you by the father of the girl.

A. Yes, by the father and maternal uncle of the girl.

Q. Both of them were literate.

A. About the father I am sure. I did not enquire about the maternal uncle.

Mr. Mitra : You are for legislation fixing the age of marriage. What age do you suggest ?

A. 16 years.

Q. What age do you fix for extra-marital cases ?

A. 16 would do.

Q. If we fix the age of marriage at 16 consummation will take place generally at 17 in marital cases. Don't you think that in extra-marital cases some precaution is necessary. Even for men we fix the age of discretion at 18 ; and it has been suggested by many that for extra-marital consummation not only is physical development necessary but the girl must be also able to give intelligent consent. Will you not fix a higher age for extra-marital cases therefore ?

A. We may fix it at 18.

Q. You are giving your personal views. May I take it that the Sabha will also agree with these views ?

A. More or less they will agree in general. After writing the answers I had a talk with some and they agreed. I cannot say about all. We can say it is possible they will not object to it.

**Q.** You say that the maximum punishment in marital cases should be 5 years. At present it is two years above 12. Have you known any case in which this maximum punishment has been dealt?

**A.** I have not seen any case of this nature in court. No husband has ever been tried.

**Q.** Why do you think that 2 years' punishment is not sufficient?

**A.** That is only a question of discretion with the court. I feel that when we put 10 years and 2 years side by side it does not seem proper that the one should be treated so leniently. There should be some sense of proportion.

**Q.** Supposing up to 14 years there is no difference between extra-marital and marital cases and between 14 and 16 the punishment is less, would you accept that?

**A.** This won't make much difference. I think if leniency is to be shown 5 years are enough.

**Mr. Kanhaiya Lal:** You have said that marriages should take place when 3 years have passed after the first menstrual discharge. Have you any authority for that?

**A.** (The witness quotes verses 91 and 92 from Manu, Chapter 9).

**Q.** You have referred to Parasari and Shigrabodh.

**A.** There it is given that a girl should be married before she attains puberty. These are all recent works. There is no such injunction in the old scriptures.

**Q.** What Manu says is that it is the duty of the father and the mother to see that a girl is married and if they do not do so within three years of puberty, it is open to the girl to select her own husband.

**A.** I interpret it in this way, that the proper age for marriage comes only after 36 menses have occurred. I have read many commentaries and I rely upon them. There may be some difference of opinion.

**Q.** You have said that the punishment for marital cases should be 5 years. Don't you think it will involve very great suffering to the girl wife if the husband is punished for such a long term.

**A.** We shall have to tolerate it. If you want to bring about social reform it will mean some hardship. For the sake of society we must put up with this hardship.

**Q.** When the husband returns from jail he may not like to see the face of the wife and may perhaps discard her altogether.

**A.** I don't mind. I would prefer that she may be given in marriage again. There cannot be any marriage at such a small age.

**Q.** You are prepared to see that she suffers the terrors of bigamy.

**A.** If such cases arise there can be another amendment of Section 498. How can we call it marriage when such a heinous offence is committed?

**Q.** If a punishment of 5 years is provided do you think that people would be ready to bring cases to light knowing that it may result in such serious consequences?

**A.** In the beginning they may not be ready to bring forward cases. Already no cases come to court. This law will be there, section 44 Criminal Procedure Code, will be there and the societies will be there and all these combined will bring the cases out. In my 18 years' practice I had only one case, and even in that case the mother tried to have the marriage dissolved.

**Q.** Would you make marital offences cognizable or non-cognizable?

**A.** Cognizable with restriction. Only police officials of a superior grade should take cognizance.

**Q.** Would you make them compoundable?

**A.** Never. It would defeat the very law.



Q. Do you realise that there may be cases in which the husband is only 16 years and the wife is also very young? They are brought together by some sort of circumstances. Would it be desirable in those cases that the boy husband should suffer the punishment of that character? Will it not be a very great hardship to the boy because the circumstances have placed him in that situation?

A. The court has always the discretion in awarding punishment. If there are extenuating circumstances the court would give lenient punishment. 5 years is the maximum.

Q. Would you also like that a warning only under Section 562, Criminal Procedure Code may be given?

A. If the Magistrate considers it desirable.

Q. Would you recommend that there may be a system of matrimonial courts trying these cases?

A. I have not given serious thought to it. But I think it is a fine idea. If some equivalent court is made I will have no objection.

Q. You have said that the system of birth registration should be improved. Can you suggest any methods of making it more accurate?

A. Up till now in some municipalities it is a penal offence. Of course the punishment is very small. Some 10 or 5 rupees fine is imposed. If it could be included in the Indian Penal Code in some way or other that would be very good. This fine is imposed in very rare cases. Then again the responsibility is only on the father.

Q. In the rural areas is it working satisfactorily?

A. It is not working anywhere.

Q. It has been suggested that a copy of the birth certificate should also be granted to the reporting individual giving all the particulars which will serve as evidence at the time of need.

A. But why will the husband produce that in marital offences?

Q. The father of the girl may be anxious to prove the age of the girl.

A. In that case it would be helpful.

Q. Would you further suggest that a man should make a supplementary report after the birth has been reported giving the name of the child as the name is usually given after some time. That is simply to establish identity.

A. That will be very cumbrous and unworkable.

Q. If we are going to have marriage legislation and also fix the age of consent would it not be desirable to have a system of registration of marriages?

A. I would have no objection if it is made practicable.

Q. Who should be the registering authority?

A. If it is made a part of the registration office that would be better. A separate clerk could be appointed in each place.

Q. Would you recommend that the municipal boards and the district boards should take up this work?

A. Next to that I would prefer that and a third alternative the revenue officials if the former two are not practicable. We may appoint a clerk in the collectorate, but that won't be very satisfactory.

मनुस्मृति अध्याय ८ श्लोक ८०, ८१, ८२

त्रोणि वर्षाण्यु दीक्षेत कुमार्य तुमतो सतो ।

अर्धं तु कालादितस्माद्विन्देत सद्रथं पतिम् ॥८०॥

अदीयमाना भर्तार मधिगच्छेद्यदि स्वयम् ।

नैनः किञ्चिदवाप्नोति न च वं साऽधिगच्छति ॥८१॥

अलंकारं नाददोत पित्र्यं कन्या स्वयंवरा ।

मातृकं भ्रातृदत्तं वास्तेना स्याद्यदितं हरेत् ॥८२॥

कन्या को उचित है कि ऋतुमती होने के पश्चात् ३ वर्ष तक विवाह की बात देख कर योग्य वर से स्वयं अपना विवाह करलेवे। पिता आदि के नहीं विवाह कर देने पर स्वयं विवाह कर लेने से उसको तथा उसके पति को कुछ दोष नहीं होगा। किन्तु इस प्रकार से स्वयम् विवाह कर लेने वाले कन्या माता, पिता, और भाई के भूषणादि लेजाने पर चोर समझी जायगी।

(१३) पाराशर स्मृति ७ अध्याय

अष्टवर्षा भवेद् गौरी नव वर्षा तु रोहिणी ।

दशवर्षा भवेत्कन्या अत ऊर्ध्वं रजस्वला ॥६॥

प्राप्ते तु द्वादशी वर्षे यः कन्या न प्रयच्छति ।

मासि मासि रजस्तस्याः पिबन्ति पितरोनिशम् ॥७॥

माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।

त्रयस्ते नरकं यान्ति दृष्ट्वा कन्या रजस्वलाम् ॥८॥

यस्यां समुद्भवेत्कन्या ब्राह्मणो मद मोहितः ।

असम्भाष्यो ह्यपांक्त्यः स विप्रो वृषलोपतिः ॥९॥

यः करोत्येकरात्रेण वृषलो सेवनं द्विजः ।

स भैक्ष्यभुग्जपन्नित्यं त्रिभिर्वर्षिर्विशुध्यति ॥१०॥

८ वर्ष की पुत्री गौरी, ९ वर्ष की रोहिणी और १० वर्ष की कन्या कहलाती है, उसके बाद वह रजस्वला होती है ॥६॥ जो मनुष्य १२ वर्ष की हो जाने पर भी अपना कन्या का विवाह नहीं करता है उसके पितर प्रति मास में उस कन्या के रज की पीते हैं ॥७॥ उसके पिता माता और बड़ा भाई तीनों नरक में जाते हैं ॥८॥ जो ब्राह्मण मद से

भोजित होकर ऐसी कन्या से विवाह करता है वह संभाषण करने और पंक्ति में बैठने योग्य नहीं है, उसको वृषलोपति जानना चाहिये ॥८॥  
जो द्विज एक रात भो वृषलो से मैथुन करता है वह ३ वर्ष तक भिक्षा का अन्न भोजन और उप करने से शुद्ध होता है ॥९॥

(१५) शङ्ख स्मृति १५ अध्याय

पितृवैश्मनि या कन्या रजः पश्यत्व संस्कृत ।

तस्यां मृतायां नाशौचं कदाचिदपि शाम्यति ॥८॥

यदि बिना विवाही हुई कन्या अपने पिता के घर में रजस्वला होजावे तो उसके मरने का अशौच कभी नहीं छूटता ॥८॥

**Written Statement, dated 13th September 1928, of Dr. E. A. DOUGLAS, Doctor-in-charge, Zenana Bible and Medical Mission, the Kinnaird Memorial Hospital, Lucknow.**

Before answering the Questionnaire in detail, I would point out to the Committee the extraordinary difficulty of getting correct information as to the correct age of a patient in hospital. "How should I know, my mother is dead" is a common answer, or "How should I know—just what *you* say is right" is another.

I operated on a Mohammedan girl in 1923, she then gave the age of 13, which was probably correct as she was then too immature to deliver her baby, so Caesarian Section had to be performed. She returned last month bringing what was obviously a 2 years' old child and now giving her age as 20 !

Possibly in certain sections of the Community the correct age can be ascertained but generalising for Hospital patients one's conclusions are largely guess work.

I. Educated and thoughtful Indian men and women, whether Hindu or Mohammedan are dissatisfied with the present age.

II. I think an advance on the present law is justified, as I consider 14 years too young for the age of consent. (See answer to Questions 9 and 12.)

III. By the rules of my Mission I am not permitted to take up Medicolegal cases, so cases of Rape are not specially brought to my notice. Not a month, indeed scarcely a week passes, however, but I see unmarried girls of fourteen or fifteen, and not unfrequently widows, pregnant usually by some relative living or visiting in their house. In these cases I am very doubtful about the "Consent."

IV. As far as I can judge there is a gradual strengthening of Public Opinion, against early marriage, but as far as I can judge, villagers marry their daughters just as early, though the marriage is not as a rule consummated before the legal time. I am not in a position to judge how far the law is enforced.

V. Eleven and twelve are the usual ages given for the commencement of Menstruation in this part. I do not find any constant variation in the Hindu or Mohammedan girls, or in the class of Society to which they belong.

VI. As far as I am aware puberty is usually obtained before cohabitation is allowed.

VII. I understand that the Shastras enjoin the marriage of a female before she arrives at puberty and this is stated in various books on Hindu Law (e.g. Mayne and Mulla).

The Sage Vias says "that the giver of an 8 years girl goes to the Nag Lok, 9 years girl to Baikunth, 10 years girl to Mirt Lok while that of an 11 years girl goes to Nark Lok (Hell)".

VIII. From enquiries I understand that Gaona is usually performed after puberty in this part of India.

IX. I do not consider the attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage. I think three or at least two years should be allowed for a girl to mature properly. Puberty itself is a time of physiological stress to the individual. When to this is added the strain of married life and new conditions even if pregnancy does not take place it is putting far too great stress on the individual for her to remain really strong or bring forth healthy children.

X. By 16 years most girls in Indian homes would be able to understand the consequences of cohabitation.

XI. I have rarely seen cases which have outwardly caused injury to a girl apart from rather badly torn vagina. The worst case I saw was in a girl of twelve whose vulva and vagina were so badly mutilated and the girl's mental condition was so badly affected that she was quite demented. Her condition was discovered by her sister who forcibly removed her from her husband's house. Her condition on admission to Hospital was unspeakable, all the vulvar tissues crawling with maggots, and the girl herself infected with gonorrhoea.

Incidentally the husband sued the family for restitution of conjugal rights and won his case, I am told!

XII. I do consider early maternity responsible for high infant and maternal mortality. The puny babies, and the ignorance of the mother and inability to look after the child is appalling. It is rare to find that the baby of a very young mother has survived. The occurrence of tuberculosis in young mothers after child birth is very prevalent. It is a matter for investigation whether osteomalacia is not an outcome of early marriage. Certainly it is more prevalent in Hindus than in Mohammedans in whom the marriage age is higher.

As for the hindrance to the intellectual progress of the Nation, one could write a volume! If India is to take her place with the other Civilised Nations of the world she will have to make vast changes in the status and education of her women and girls. It is impossible for a girl to attain physical and mental maturity if she is married early. Taken away from school during the most formative years and bringing forth children before she is physically or mentally fit undoubtedly has a deleterious effect on the whole community.

XIII. I think there is a development of public opinion amongst the educated classes in favour of the extension of the age of consent but I do not think it touches the masses.

XIV. I should think a great majority of the women who come to hospital do not think about the question but just accept it as inevitable. Those who do think almost universally say it is a bad thing. I have never yet heard a thinking woman say anything in favour of early marriage.

XV. I do not know.

XVI. The difficulty of determining age would be reduced if the age is raised to 16.

XVII, XVIII, XIX, XX. I am not in a position to answer these questions.

XXI. Much more will be accomplished by means of education and social propaganda; at the same time in that propaganda I should make it very definite that severe penalties attach to infringement of the law.

**Oral evidence of Dr. E. A. DOUGLAS, Doctor-in-charge, Lady Kinnaird Memorial Hospital, Lucknow.**

(Lucknow, 18th January 1929.)

*Mr. Kanhaiya Lal* : How long have you been in charge of the Hospital ?

*A.* 19 years.

*Q.* Have you had considerable practice both in the city and rural areas ?

*A.* I do not go out so much. My work is confined to the city and the people who come to the city from outside.

*Q.* Have you had a large number of labour cases ?

*A.* The labour cases have been increasing in number. When I first came to the hospital I had about 30 a year. Gradually it went up to 100 and 200. It was nearly 300 last year.

*Q.* Have you had gynaecological cases also ?

*A.* No ; labour cases only. We have cases of actual delivery only, not antenatal cases.

*Q.* Do you think that early marriage is largely prevalent in this part of the country ?

*A.* Not so much as in other parts. This is specially a Muhammadan centre and the age of marriage amongst Muhammadans is higher than amongst the Hindus.

*Q.* In what castes do you find early marriages ?

*A.* More amongst the village Hindus than amongst the city Hindus.

*Q.* Have you noticed any evil results following early marriage and early consummation ?

*A.* I am sure I have. I will take the effects on the child. As a rule the children are very bad. Infantile mortality in Lucknow is very large. It is specially high amongst the children of young wives.

*Q.* Why ?

*A.* Because they are ignorant and absolutely do not know how to bring up the children. Our experience has been that when girls come up for the second or third delivery they always tell us that their first children died after a week or two.

*Mrs. Beadon* : Do you think it is because the child is born a weakling ?

*A.* The child was not necessarily born weak, though sometimes they are very little things.

*Q.* How many of these young mothers have you found during the last 5 years ?

*A.* Less than 30.

*Q.* What about the babies of these mothers ? Are they average in size ?

*A.* Between 5 and 6 pounds. In one or two cases there have been very small babies. In others they have been of the average weight.

*Q.* Do you think that the very high infantile mortality here is due to ignorance or Purdah and bad feeding ? What proportion do you think can be ascribed to poverty and ignorance and what proportion to early maternity and weak children ?

*A.* I should think that the majority of cases are due to ignorance.

*Q.* Is there joint family system prevalent here ? Some people say that the child born to a young mother was generally reared by the mother of the girl or her mother-in-law. Do you think there are elderly women in the houses who will be able to look after the children ?

*A.* Usually the girl's mother looks after the children.

*Q.* Do you think that these young mothers are able to feed their children and nurse them ?

A. They have sufficient milk. But they feed the children on all occasions. As soon as the child cries the mother or grandmother will insist on the child being fed.

Q. You say that the children of young mothers are puny. What are the results as regards the mother ?

A. We very often find young mothers coming up with tuberculosis trouble afterwards, after the first pregnancy or the second, but generally after the first.

Q. How long after delivery ?

A. 2 or 3 months after. They will say they have been ill ever since the birth of the child.

Q. Do you find that labour is difficult amongst these young women ?

A. It varies very much indeed. I cannot say that because a girl is pregnant at an earlier age, therefore her labour is difficult.

Q. Do you find very bad tears of the perineum for instance ?

A. Yes ; there have been torn perineums.

Q. Are there many cases of fistula ?

A. We have had a lot of cases of fistula, but not necessarily in the case of young mothers. I think it is due mostly to the after effects of osteomalacia.

Q. Do you get cases of osteomalacia ?

A. We do.

Q. Is it more common amongst the young mothers ?

A. It starts very often after the second pregnancy, generally in a mother of 17, 18 or 20. I think it is an important point that in Lucknow we get far more cases of osteomalacia amongst the Hindus than amongst the Muhammadans. For one case of osteomalacia amongst Muhammadans we get more than 10 cases amongst Hindus. The point I would like to emphasise is that the age of marriage amongst Muhammadans is higher than amongst Hindus. Therefore the question is whether there is any connection between osteomalacia and early marriage. Dr. Balfour is making an investigation into these cases and we are filling up forms supplied by her. I think she will be able to give you some statistics on the point.

Q. Do you find that a young mother is specially liable to sepsis after delivery ?

A. It depends upon those who treat her, entirely.

Q. Some of the medical witnesses have told us that they are susceptible to sepsis and they become sterile thereafter ; but older women are able to resist it better even if it be an ordinary handling they get. Do you agree ?

A. I do not think that that would be my experience if you take only the hospital work. I do not think that the first labour in a mother is any more septic than the second labour.

Q. Except osteomalacia do you find any other special disease ? For instance do you find cases of eclampsia ?

A. Eclampsia we have noticed. My experience is that in young mothers if there is eclampsia it is very difficult to get them cured. Mothers under 15 are far more difficult to cure than elderly women.

Q. Have you noticed a tendency to one-child sterility in these young mothers ? Have you noticed any gynaecological conditions specially prevalent amongst them ?

A. I would not like to generalise, but I find cases of Hyper involution of the uterus after the first pregnancy. In the cases in which sterility occurs I think gonorrhoea is far more accountable than early child-birth.

Q. Have you noticed any special connection between gonorrhoea and early motherhood ? Do early mothers suffer more from gonorrhoea than women who have child birth later ?

A. I am afraid I cannot answer that question. Naturally in these cases one's opinion is centred more on the young girl than on elderly women.

Q. In para. 11 you refer to a case in which there was serious injury to a girl. Have you seen any other cases like that?

A. I have seen one case of a very badly torn hymen and another of a badly lacerated vagina. One was a girl of 14, and the other was 12.

Q. Were these recent cases?

A. One happened last year.

Chairman : You say that you have come across cases of unmarried girls of 14 or 15, and not unfrequently widows, becoming pregnant. Do you mean to say widows below 14 and 15?

A. It is ambiguous, but I do not mean widows below 14 and 15.

Q. Within the last 12 months how many cases do you think you have come across cases of unmarried girls below 14 and 15 becoming pregnant?

A. 6 cases at least.

Q. What caste were they?

A. All of them purdah women of the average middle classes. In one case they were trying to hush up the case.

Q. What caste was it?

A. Muhammadan caste. Of the six cases one was a Christian and the rest were purdah girls.

Q. Have you had occasion to see a girl mother at 14, having no pregnancy afterwards for four or five years, and have you noticed the results in the case?

A. I cannot think of any case of that sort.

Q. In all these cases, do you find that frequent pregnancies are one of the causes of deterioration?

A. I find that frequent pregnancy is the rule.

Q. We have been told that if a girl becomes a mother at 14, but there is no pregnancy for 4 or 5 years, there is no risk. Do you think so?

A. It may be so; but we do not get such cases in actual experience. They very often get children within 2 years.

Q. You must have come across *primiparous* after 17 or 18. Would you say that their babies are better than the babies of *primiparous* of 14 or 15?

A. Certainly it is so. They are better than *primiparous* below 14.

Q. With regard to labour troubles also, do you think the former suffer less?

A. We are prepared for more trouble in a young girl of between 12 and 14. But we rarely get such cases. They may be 2 or 3 cases below 13. After 15 or 16 we expect no trouble.

Q. Can you give us any tests by which we can say that of all the reasons that lead to the deterioration of the health of the girls and their children, young age is really an important cause?

A. Whether it is an important cause or not, we cannot say, but I feel that a mother at that age is unfit to go through the labour. It is a terrible strain on her.

Q. In this part of the country have you got any communities in which marriages are as a rule after 17 or 18?

A. I do not know any, except that Muhammadans as a rule do not have early marriages. I do not know whether they have any law about it. They marry after 15 or 16.

Q. In your hospital do you get more cases of Hindus than Muhammadans? Do Muhammadans avail themselves of the institution to which you belong?

A. I think the proportion of in-patients will be a greater number of Muhammadans than Hindus. In any case Muhammadan patients predominate in our hospital. We are very strictly purdah in our hospital and a great majority of women who come to our hospital are purdah.

*Q.* Apart from your hospital work, have you any knowledge of Indian homes ?

*A.* I always try to bring patients to the hospital. But I have got some private practice which is mostly amongst rich people.

*Mrs. Nehru :* Can you give me the ages of those widows who came to the hospitals ?

*A.* They were elderly women. One was between 20 and 30 ; another was between 30 and 40 and another was over 40. The last woman belonged to a very respectable family in Lucknow.

*Q.* Were they Muhamnadans ?

*A.* They were all Hindus.

*Q.* Have you come across these cases only in Lucknow ?

*A.* Yes ; I practise only in Lucknow.

*Q.* Did they come to you during the last year ?

*A.* I have seen quite a good number within the last year.

*Q.* Can you give us the exact number ?

*A.* I think I have seen 4 cases. One was a young widow belonging to a good family. The rest belonged to the servant class.

*Q.* Did they deliver in the hospital ?

*A.* They are pregnant. They have not yet delivered.

*Q.* In your opinion is only early maternity injurious, or early consummation also ?

*A.* Both are injurious.

*Q.* Is it only physical injury, or is there mental injury also ?

*A.* There is mental injury also. I think there is more of mental and moral strain in these cases.

*Q.* As far as the progeny of these young mothers go, do you think they are weaker than the progeny of mature mothers only so far as the physical condition goes ?

*A.* They even seem to die.

*Q.* It may be because the mothers cannot look after them. Supposing they are looked after properly at the time of birth and afterwards, do you think they have any physical drawbacks ?

*A.* I do not honestly think so.

*Mr. Mitra :* What in your opinion should be the ideal age for marriage ?

*A.* I think in India 16 would be a good age.

*Q.* Do you find that girls here mature earlier than in England ?

*A.* Between 11 and 12 is the usual age here.

*Q.* Has the climate any effect upon the maturing of girls ?

*A.* I think it is a little earlier in hot climates.

*Q.* Do you think it is different amongst the different communities.

*A.* No ; I cannot say that. I think it is even whether poor or rich.

*Q.* In your statement you refer to a case of restitution of conjugal rights. Do you think that below a certain age the husband should be prohibited from asking for conjugal rights ?

*A.* Yes ; I would like to prohibit it.

*Q.* Do you know that the Sastras enjoin early marriages and there are texts on both sides ?

*A.* I asked a lawyer friend of mine. Though I do not know enough about it myself, it seems to be a religious rite to marry girls early. But I am told that consummation does not take place at the time of marriage.



**Q.** Do you think that in extra-marital cases the age should be higher than in marital cases ?

**A.** I see no reason why it should be.

**Q.** Don't you think that in extra-marital cases, the age should be higher than in marital cases ?

**A.** I think that there is no reason why it should be.

**Q.** The reason is that in marital cases we look only to the physical development of the girl but in extra-marital cases the girl must be in a position to realize the consequences of her act because in a Hindu family, after the extra-marital connection, the girl's prospects are gone and she has no chance to be married again and the child that is born of her will also be considered an illegitimate child and so the consequences are certainly much graver and you also certainly think that they have very little chances of being properly educated. So does it appeal to you that there should be a difference ?

**A.** Even then I don't really see why there should be a difference. I think that at 16 every Indian girl can realise the consequences of her act.

**Mr. Bhargava :** You have said in reply to Question No. 9 that two years should elapse between the attainment of puberty and the attainment of proper marriageable age and in reply to Question No. 5 you have said that 11 or 12 is the usual age for the commencement of menstruation. It follows therefore that at 13 or 14 a girl arrives at the age at which she should be considered fit for marriage or consummation. Is it not so ?

**A.** Yes.

**Q.** Now you say that 16 is the proper age. May we know whether you think that five years should elapse or only two years should elapse ?

**A.** I think it would be much better if five years elapsed.

**Q.** That is to say if a girl menstruates at 11, then you will have 16 as the limit, is that correct ?

**A.** Yes.

**Q.** Do you suggest that 16 is the ideal age ?

**A.** Yes.

**Q.** If we fix 14 for marriage, will you be satisfied ?

**A.** No, I wouldn't be really satisfied. I say that the girls should be educated in that time.

**Q.** Physically speaking what do you think ?

**A.** My experience is that menstruation is a physical strain on the girl's health and to superimpose marital relations at that time are detrimental to the girl's general health.

**Q.** But according to you would 2 or 3 years not elapse so that this condition would be satisfied ?

**A.** Yes.

**Q.** So at 14, according to you, physiologically she is fit for marriage ?

**A.** Yes.

**Q.** Then you have spoken about the intellectual deficiency. Have you any occasion to see that boys and girls born of young mothers are intellectually deficient ?

**A.** I think my point is that it is bad because you are not educating the girls. That is what I mean by that.

**Q.** But have you occasion to find that the babies born of young mothers are intellectually deficient in any way as compared with the babies of older mothers ?

**A.** No, I don't think so. I don't see if they survive at all.

**Q.** Are both hysteria and tuberculosis increasing ?

A. Tuberculosis is certainly increasing. We know far more cases of tuberculosis because they come to us and they have been diagnosed. Tuberculosis is absolutely rampant.

Q. Will you ascribe it to poverty or otherwise or more to maternity ?

A. I couldn't say one apart from the other.

Q. Could you be able to say that out of these three or four causes, this one cause, viz., early maternity, is a predominant factor ?

A. No.

Q. What about hysteria ? Is it increasing ?

A. I don't know whether it is increasing.

Q. Is it one of the evil results of early marriage ?

A. No, I don't think that I would say that. I think it is due to the result of not becoming pregnant within some time after marriage.

Q. Do you mean to say that hysteria is due to the result of the failure of getting pregnancy after marriage ?

A. Yes.

Q. So that according to you child-birth is one of the cures of hysteria ?

A. I cannot say that it is a cure but more often it is so.

Q. Out of all evils, do you consider early maternity or frequency of pregnancy to be the worst evil ?

A. I think one might be avoided and the other viz., frequency of pregnancy cannot be avoided. But the early maternity can be avoided if you raise the age of marriage.

Q. Can you say that the later children of the same mother, say the third or the fourth child, is better physically or intellectually than the first or second child ?

A. No, not necessarily. But so often I find that the first or second baby dies in the cases of young mothers and they don't survive at all.

Q. Is it your experience that at the time of birth these babies look all right but after some time it is found that their resisting power is not strong and they die ?

A. A good many of them die if they are not born of a full term mother.

Q. Does miscarriage also happen in the case of young mothers ?

A. Usually it happens.

Mr. Yakub : Do you say that the Mussalmans generally don't have early marriages ?

A. Not so early as the other communities.

Q. Do you find that the children born of the Mussalman mothers are healthier than the children born of the Hindu mothers ?

A. I don't say that.

Q. If the Mussalmans, according to you, marry their girls at a late age, their children ought to be healthier ?

A. It is largely a question of ignorance too.

Q. Does motherhood come earlier to Muhammadans or to Hindus ?

A. Motherhood comes to Muhammadan girls a little later.

Q. What about their children ?

A. I should like to look to my books about the weights of babies and then I will be able to tell you. I think that in both the cases the children are of the same development.

Q. Is there difference in the percentage of infant mortality amongst the Hindus as compared with the Mussalmans ?

A. That I don't know.

**Q.** Do you think, according to your own opinion, that the children born of older mothers are healthier than the children born of young mothers ?

**A.** Yes.

**Q.** So don't you think that the infant mortality must be less amongst the Mussalmans than it should be amongst the Hindus ?

**A.** It should be.

**Q.** About the mortality of young women, do you think that there is more mortality amongst the Hindu girls than amongst the Mussalman girls ?

**A.** I couldn't answer this question. In Lucknow we are dealing more with Muhammadans than with Hindus but I cannot give you the proportion of mortality of young women.

**Q.** Do you find that Hindu girls suffer more from the results of early marriage than the Mussalman girls ?

**A.** I think that osteo-malacia is far more prevalent amongst the Hindus than amongst the Muhammadans.

**Q.** Are there any maternity homes at Lucknow ?

**A.** There are homes but not for maternity cases only.

**Q.** Have you got any special maternity arrangements in any of the hospitals here ?

**A.** We have got a maternity ward in the hospital. In the medical college and in the Dufferin Hospital there are maternity wards.

**Q.** Have you got any arrangement for the training of midwives ?

**A.** We train our own nurses for this and they are trained for a year and are given a certificate.

**Q.** Do you believe here in Lucknow town, that generally the people utilize the services of trained midwives or do they call for the old untrained *dhais* ?

**A.** They are increasingly using the trained midwives.

**Q.** Is there any difference between the Hindus and Mussalmans in this matter who utilize the services of trained midwives ?

**A.** I don't think so.

**Q.** Don't you think that infant mortality is to a very great extent due on account of the untrained midwives and *dhais* being usually sent for by an ordinary Indian ?

**A.** I don't feel prepared to say that because after all my practice is in hospitals and there the infant mortality is not high.

**Mr. Kanhaiya Lal:** You say that the usual age of marriage or maternity amongst the Muhammadans is higher than amongst the Hindus. Does that apply to lower orders of Muhammadans also ?

**A.** I think so.

**Q.** What is the age of marriage amongst them ?

**A.** I don't remember Muhammadan girls being as a rule married under 15.

**Q.** Among lower classes of Muhammadans also ?

**A.** Yes.

**Q.** What is the age of marriage amongst Hindus ?

**A.** I think it is below 14 or 15, as far as I have been able to ask. I can say that very often marriages take place before puberty but the gaona or consummation does not take place before puberty. I was asking a Hindu about this question. He was telling me to say if the husband is old compared with the girl, he wants his wife at once with him but if she has a young husband, consummation is not effected and it is postponed for some later date.

**Q.** Do you keep a register of all the delivery cases ?

**A.** Yes, but I don't know whether the age is mentioned there.

**Q.** Can you tell us whether you have had labour cases of 13 or 14 ?

**A.** Yes.

**Q.** Is it amongst the Hindus or amongst the Muhammadans ?

**A.** I have had occasionally Muhammadan girls at 14 but very often I have had Hindu girls at 14.

**Q.** You have said that a girl might be physiologically fit for marriage at 14. Do you think that would be a safe age for permitting consummation of marriages ?

**A.** I think that on the whole it may be a safe age.

**Q.** Would you recommend a higher age ?

**A.** I would recommend a higher age. My opinion is that girls should be married later and they should have a chance to be educated and get to know something about themselves and the world and how to feed their babies and so on.

**Q.** But don't you see that the girls in rural areas have little chance of getting education ?

**A.** I think this is the biggest problem of your whole question. How are you going to educate the whole rural area and generally cases in rural areas don't come to the notice of doctors.

**Q.** Supposing there is a law for consummation fixing the minimum age at 14 or 16, in order to help detection of breaches of the law, would medical men be able to help us and report the cases which come to their notice, confidentially to the proper authorities ?

**A.** Certainly not. I mean it is a breach of professional secrecy.

**Q.** Would you recommend that an obligation be imposed by law upon them to report such cases ?

**A.** No. I think you are interfering with the liberty of the doctor and the patient.

**Q.** Can you suggest any other means for bringing these cases to light because you know the girl would not complain and her parents wouldn't complain ?

**A.** The people in the villages may complain as well as their friends and relations may do it.

**Mr. Bhargava :** If doctors have got obligations towards their patients then have not the relatives and friends got obligation towards their people ?

**A.** I think that there must be many cases occurring but that they never come to light. If there is a law for such things and if there is a penalty for disobeying it, then I think everything will be all right. My own feeling is that until one really begins to educate the people, you cannot make the law very effective and I think education should be started. It shouldn't be simply confined to the towns only but to the rural areas also and after all the life in the villages has got to be changed from the sanitation and every other point of view.

### **Oral evidence of Mrs. AHMEDSHAH and Mrs. MITTER, Lucknow Women's Association, Lucknow.**

*(Lucknow, 18th January 1929).*

**Chairman :** Are you elected by the Women's Association, Lucknow, to represent the opinion of the Association, with regard to the questions that are under enquiry now ?

**A.** Yes.

**Q.** What is the number of your Association ?

**A.** We have 80 members.

**Q.** When was your Association started ?

A. It was started last year as an outcome of the Delhi All India Conference.

Q. What class of ladies are members in your Association ?

A. Of all castes. Hindus, Muhammadans and Christians.

Q. Have you ladies of orthodox views ?

A. Yes, we have several of them.

Q. On the points under enquiry have you adopted the Delhi Conference's resolution about the age of the girl ?

A. We did not have any special conference about that but when this questionnaire came to us, we sent a simplified questionnaire to our members and we took care to specially send it to orthodox ladies and we have their views.

Q. What is the result ?

A. They say that they want 16 as the minimum age of marriage and they prefer 18.

Q. Do they give any age for boys ?

A. 21 is the least. And some in fact said to me that it should be 24.

Q. Was there any consideration as to whether they would like to have the Law of the Age of Consent or they would have a law fixing the minimum age for marriage for girls and boys ?

A. We came to the conclusion that it is better to fix the minimum age of marriage rather than to raise the Age of Consent.

Q. Are they really in favour of a marriage legislation fixing 16 as the minimum age for girls ?

A. Yes.

Q. I suppose this age 16 involves physical as well as other considerations about the girl, for instance her education, is it so ?

A. Yes, because many of the members are educated and those who are not educated they themselves are in favour of their girls being educated.

Q. Apart from this membership, have you any connection with ladies outside ?

A. Yes.

Q. Have you had any chance of finding out their opinion on these questions ?

A. The Muhammadan ladies say that their girls are not married at an early age but I have spoken to some high class Hindu ladies say, with one or two Ranees, and they say that they are in favour of a much later age for marriage and they are in favour of legislation for it because otherwise it is very difficult for them to take an initiative. People who are so highly placed find it very difficult for them to go against convention and that therefore legislation would help them much.

Q. Even amongst the lower classes of Mohamedans is there not child-marriage ?

A. Not as far as I know. I would call a girl a child up to the age of 14 or 16.

Q. Besides the Muhammadans do you know of any community whose girls are married late necessarily ?

A. The Parsis marry their girls quite late. The Christian girls are not married early.

A. (Mrs. Mitter) The Kayasthas here in this province keep their girls unmarried till quite a late age say till 18 or 19.

Q. Have you had any occasion to compare the children of older mothers with the children of younger mothers ?

A. (Mrs. Ahmedshah) I think the children of younger mothers look very fragile and delicate.

A. (Mrs. Mitter) Amongst the lower classes the children generally have rickets.

Q. Have you reason to believe that, although the Muhammadan girls are married later than the Hindu girls, their being in purdah has got any bad effects on their babies or on themselves ?

A. The purdah and other things upset the advantages that they have, and secondly there are differences in the condition of their living also.

Q. Can you say that the middle class Muhammadans are less hygienic ?

A. I think the Muhammadans are less hygienic than the Hindus.

Q. Do you know that as a matter of fact the middle and lower classes of Muhammadans resort to *Dais* that have been provided by the Municipality ?

A. I think they are beginning to do so more but now there is a prejudice against that.

Q. I understand that you have got 7 child welfare centres in the city. Do you think that they are gradually availing themselves of these *Dais* but not to the extent you would desire ? Is it not so ?

A. I think that goes hand in hand with education. As soon as they begin to understand the value of it, I think they will avail themselves of these *Dais* more. Even many of our members don't know much about these things but we are trying to get our members to learn them. Mrs. Mitter is the Secretary for the Committee of girls' schools. We have another member who visits the child welfare centres and another member visits the women in prison. I mean the consciousness is awakening very quickly.

Q. Although the Muhammadan girls are married later, do you think that there is any material difference between the ages of maternity between the Hindus and Muhammadan girls ?

A. I shouldn't think that there is a great difference but it is so amongst the Parsis.

A. (Mrs. Mitter) I say that unless there is a compulsory registration of births, it is all guess work to say as to what is the age of the girl.

Q. But I understand that there is a much better record of births here. Do you know anything about it ?

A. (Mrs. Mitter) They are supposed to keep a better record and they do that but when the girl is married you cannot ascertain the correct age of the girl from that register and so if it is made a law that the parents should give the correct age and name of the girl at the time of the marriage, then that will be of help to us to know the correct age of the girl.

Q. You mean that you want a register of marriages giving the names and the ages of parties. Is that what you want ?

A. Yes. I want not only a birth and death register but I also want a marriage register. Marriages are being recorded in the Brahmo community and certain other communities. Amongst the Parsis and the Christians also the marriages are registered.

Mrs. Beadon : Have you seen cases in which early maternity has occurred, say under 15 years of age ?

A. Not being professional, we have not gone into cases like this.

Q. What do you think of these cases in which early maternity occurs ?

A. (Mrs. Mitter) They become very old before they become 30.

Q. What do you think of the children of these young mothers ?

A. I think they are more open to diseases and their resisting power is not strong.

Q. Do you think that these young mothers lose the first one or two of their children ?

A. We hear that they lose their first two children.

A. (Mrs. Mitter) Mostly these young mothers don't have their first child at all. The second child if it happens to survive is always delicate and has generally rickets.

Q. Do you think that the Kayastha girls lose their first and second children ?

A. Amongst the Kayasthas they get their girls married at a late age and I don't see any special diseases affecting their children.

Q. I wanted to know whether many of the Kayastha girls lose their first and second children as in the case of these young girls ?

A. If the first child dies at least the second is living. I couldn't recall a single instance in which the first child survived when the mother was about 14 or 15.

Mrs. Nehru : At what age does marriage take place amongst the Bengalis here ?

A. (Mrs. Mitter) About 13 or 14.

Q. Does any period intervene between marriage and consummation of marriage ?

A. No, they don't have any gaona amongst the Bengalis. They go at once.

Q. Does consummation of marriage take place before puberty ?

A. Not now.

Q. Do you know anything about the villages ?

A. No.

Q. Can you tell us anything about the low class Hindus here ? When do they get their girls married ?

A. They get their girls married at an early age say at about 11 or 12 and they wait for a couple of years or more and then gaona takes place.

Q. For gaona is puberty necessary ?

A. I think that is what it means here.

Q. Do they never consummate the marriages before puberty ?

A. No, I don't think so.

Q. In Lucknow are the women generally desirous of educating their daughters ?

A. Amongst the middle classes they are but not amongst the lower classes. That of course depends upon their financial circumstances. The lower classes have to send their girls out to work for their bread.

Q. What about the girls amongst the lower classes in the cities ?

A. They generally work and clean the vessels and look after little babies and generally get Rs. 5 or Rs. 6.

Q. Do you think that the law of the Age of Consent can be of any use if the law of marriage is not enacted ?

A. If you cannot enact a law for marriage, especially in the case of a girl who is married, it will be very difficult to detect the offence.

Q. In that case, will you have the Age of Consent law at all or will you reject it ?

A. I would rather have the marriage age raised.

Q. Suppose it is impossible to have a marriage law enacted, in that case would you have it as the second best or would you totally reject it ?

A. I wouldn't totally reject it because out of 100 cases we will be able to locate one case which will not be much good because in married families the father will never come and give you the information about this.

Q. Will societies like yours take up this matter and bring cases to light ?

A. It is difficult for us to detect, because even their friends or relations would never give the information, because they would be ruining the boys and girls.

Q. But supposing the punishment is lightened to a mere fine or the taking of a bond where there is no injury or for instance where the question of ruining the boy's future or the girl's future does not come in, will then cases come to the Court ?

A. The mere fact that a girl's case has been taken to a court is supposed to be a disgrace and so they would never bring such a case to court.

Q. Suppose no publicity is given of the proceedings and the cases are attended to by women magistrates, will then cases come to court ?

A. Even then I don't know whether you will be able to find each time, such a case.

Q. Each time it is impossible to find out any crimes. But even if we detect some such cases, will they not have a salutary effect on others ?

A. If outsiders will detect these offences, it is well and good I don't think the family members will bring such offences to light, because in India it is always considered a disgrace to have any law in such matters.

Q. But if all the environments are changed, the tribunals changed, the punishments changed and the whole thing is changed then don't you think that it will be easier to detect cases and will they not come to light ?

A. Even if it is a fine, still it will be difficult to detect a case. If outsiders bring such cases to court, it will become difficult to prove such cases.

Q. So do you think that the only way is to have a marriage law ?

A. Yes.

Mr. Mitra : Don't you like to have a consent law for extra-marital offences ?

A. (Mrs. Mitter) Certainly I do want a consent law for extra-marital offences and the age must be higher than this.

Q. What is the minimum age that you would recommend for extra-marital cases ?

A. 18.

Q. Don't you think that there are orthodox people who do not like to have a marriage law fixing a higher age than the age of puberty ?

A. I think there are certain people who so believe, but they are very few.

Q. If you make a law, are you ready to make exemptions in those cases where people believe that they must marry their girls before puberty ?

A. No. If you make exemptions for one community, you must make exemptions for all communities.

Q. Is there a feeling amongst the Muhammadans about a marriage law ?

A. (Mrs. Ahmedshah) I don't know.

Q. In hard cases for example where an old man is about to die and he wants to have his girl married and he has no other relations to look after her, are you in such cases willing to make exemptions so that she might apply to the District Judge and have a license ?

A. (Mrs. Mitter.) I am not for exemptions at all.

Q. What punishment would you have for infringement of the marriage law ? Would you have fine or imprisonment or both ?

A. At least it should be five to seven years rigorous imprisonment.

A. (Mrs. Ahmedshah) I think two years imprisonment will do.

Q. Do you think that both the parents and the priests and every body should be punished and even the mother too ?

A. Those who knowingly do it, ought to be punished.

A. (Mrs. Mitter) I don't agree that mothers are more responsible for early marriages.

Q. Do you think that both the girl's parents and the boy's parents should be punished ?

A. Just as there is severe punishment for murder and other crimes, so also the punishment in this case should be severe.

Q. In the interests of the girl don't you think that you should suggest a more lenient punishment ?



A. I cannot say whether all the parents are to be punished or whether every body is to be punished but I think that the punishment ought to be severe whether there is one person or ten persons.

*Mr. Shah Nawaz* : Do you think that the Mussalman women will welcome a legislation in respect of the marriage ?

A. (*Mrs. Ahmedshah*) I think that education will have to go hand in hand.

Q. Do you think that they will welcome such a law ?

A. (*Mrs. Ahmedshah*) So far as the Muslim women are concerned, I think their feeling is that they don't have early marriages and they don't require any legislation but those who have thought and think on this subject are willing for some such legislation.

Q. I wish to draw your attention to the fact that in Bengal and other places amongst the Muhammadans, early marriages are celebrated amongst a very large people. Will they welcome a legislation in the interest of the Mussalman girls of Bengal and other places ?

A. That I cannot say.

Q. Do you think that the Crown should be the prosecutor in these cases ?

A. Yes, but they should be in camera.

Q. Do you think that the police should investigate the case ?

A. (*Mrs. Miller*) It should be a crown case because it means the whole nation's good.

*Chairman* : You wanted the case to be a Crown case, i.e., the Government would be the prosecuting authority who would require the police to investigate into the matter. Is that what you mean by a Crown case ?

A. (*Mrs. Ahmedshah*) I don't want police interference in these matters.

*Mr. Shah Nawaz* : Do you like to have a preliminary enquiry by a Magistrate before issuing a summons or a warrant against the accused ?

A. (*Mrs. Miller*) Yes, otherwise it might be a scandal for nothing.

Q. Do you think that women will help us in the investigation of these cases ?

A. (*Mrs. Ahmedshah*) It is very difficult for women to help you.

A. (*Mrs. Miller*) The family people wouldn't go to help you but the outsiders may help you.

A. (*Mrs. Ahmedshah*) I don't think even the outsiders will do that.

Q. Would you have women police officers for this purpose ?

A. (*Mrs. Miller*) If you could get them that would be very good.

Q. Would you render marriages invalid or penalize them ?

A. (*Mrs. Ahmedshah*) I would penalize them.

Q. Are the grandmothers also responsible for early marriages ?

A. I think so, but the grandmothers are doing what they have been taught to do.

Q. Are they not fond of having grand-children as soon as possible ?

A. Yes.

Q. Do you think that the women feel strongly on these questions ?

A. (*Mrs. Ahmedshah*) I cannot say whether all the women feel these evils. But I think any woman who has been told about these things and who has understood these evils will feel that early marriage and early consummation are evils.

Q. Do you think that illiterate women think about these questions and will they resent early marriage or early consummation were they to be told about these evils or lectured on this subject ?

A. I cannot say that. If you give free and compulsory education for boys and girls, I think that will have a very good effect on them.

Q. Don't you think that early marriages are due to economic conditions ?

A. Amongst the poor they are.

Q. What remedy are you going to suggest apart from education ?

A. I don't think that the State can remedy it in any other way and I think that it is up to the Indians also to see to these questions and eradicate the evils.

Q. You recommend that the minimum age of marriage should be 16. Don't you think that a considerable number of girls from amongst the lower classes may go wrong if they are not married before 16 ?

A. That is why I say that if we could have free and compulsory education, their minds may be directed towards learning and they will never go wrong. But as it is now their minds are directed towards marriage and other things and that is one reason for their early menstruation. I have seen girls who are studying in schools attaining puberty rather later.

Q. Would you recommend compulsory education for girls ?

A. Free and compulsory education there should be.

Q. Don't you think that to have free and compulsory education, is an expensive job ?

A. Yes, it may be, but it is necessary.

Q. Do you think that the evils of early marriage and early consummation are so very widespread that we must resort to legislation ?

A. Yes.

Q. What do the Muhammadan men think about this law ?

A. I cannot say that.

Mr. Bhargava : I understand that in your opinion this early marriage is due more to ignorance than to anything else ?

A. (Mrs. Ahmedshah) It is due to ignorance and economic conditions.

Q. Unless both these things are remedied do you think that it is wise to send people for five years to prison ?

A. I said only two years.

Q. Is it wiser to send them for two years, only because the early marriage is due to economic conditions and ignorance ?

A. I say that it is the men who resort to early marriage and if women are educated I don't think they will do it.

Q. I think your idea is that men resort to early marriages without knowing the evil effects on their children. Is that your idea ?

A. I think it is because of the social custom that they resort to early marriages. If a man doesn't marry his daughter early, there is social ostricism from other members.

Q. The point is this. It is a fact that a man does not realize the consequences of early marriage and it is due to ignorance. Will you agree with me that for ignorance he should be sent to jail ?

A. I think very few men are ignorant excepting the men in poor classes.

Q. Will you make an exemption for these poor classes ?

A. Yes, you might have a lighter punishment.

Q. Now let us take the second case in which there is social ostricism. Do you not think that it is the community and it is the educated classes of men and women who should be punished rather than the ignorant man ?

A. Which educated ladies do you wish to punish ?

Q. The educated ladies who have not yet taken the trouble of educating those communities which exercise the social pressure. What do you say about this ?

A. I don't see how you could hold individual ladies responsible.

*Q.* I am not proposing that ladies should be prosecuted. I want to know why you give this punishment of five and two years when the real cause for early marriage is social pressure and not the man.

*A. (Mrs. Mitter)* But that social pressure is only done by you and by me and it is done by everybody. It is generally the men who are more anxious to marry their daughters and are more afraid of social ostricism.

*A.* Therefore the way to lighten the burden of social pressure is to send the man to jail for five years. Is that your idea?

*A. (Mrs. Ahmedshah)* I think that we have to develop the moral courage or none of these will come to a pause.

*Q.* I understand that it is for the purpose of developing that moral courage that you want this punishment?

*A.* No, I don't say that. I say that if the social pressure is severe and if as you say that there is no man who will not yield to social pressure, well, we have to teach them some how by bringing a law, so that it may be relieved.

*Q.* Will it be relieved only if you prescribe five years and two years imprisonment? Don't you think that by prescribing a lighter punishment also, it can be relieved?

*A.* I say that there must be a severe punishment.

*Q.* Now as regards the early marriage in which you say there are economic considerations, don't you see that the economic condition is neither the fault of the society nor one's own fault?

*A.* Yes.

*Q.* How do you say then that persons suffering from economic pressure should be sent to jail?

*A.* We say that the punishment should be lightened for poor people.

*Q.* But even a poor man who marries his daughter before the prescribed age by law, don't you think that if he is sent to jail for five years, there will be nobody to earn for the family and the economic considerations will be greater?

*A. (Mrs. Mitter)* I say that if it is a case of a very poor man the Magistrate has just got to lighten the punishment but if it is a middle class man or a well-to-do man, he ought to be severely punished.

*Q.* Don't you realize that the severity of punishment will prevent many people from coming forward to give evidence and really a hard punishment as you have suggested will defeat the purpose?

*A.* In that case if the neighbours and friends are so intentioned they will have every crime committed by the neighbour.

*Q.* But don't you see that if you have fine only or say one or two months' imprisonment, they will be glad to bring the man to book?

*A.* If it is sufficient I have no objection to that.

*Q.* But why should you have five years' imprisonment?

*A. (Mrs. Ahmedshah)* I only wanted the punishment to be severe.

*A. (Mrs. Mitter)* Our point is that the more highly placed the family is, the greater should be the punishment.

*Q.* Do you think that imprisonment should be provided otherwise it will not act as a check on the rich families?

*A.* I think fine is no good because a rich man never minds paying it.

*Q.* May I know if in your opinion this Gaona ceremony is going out of use?

*A. (Mrs. Mitter)* Amongst the higher classes generally the gaona ceremony is performed on the next day after the marriage so as to avoid a repetition of the ceremonies later on so that the girl may be sent to her husband's house whenever occasion arises.

*A. (Mrs. Ahmedshah)* I have only seen the Gaona ceremony taking place in the lower classes.

*Mrs. Nehru :* Is *dviragaman* performed amongst the Bengalis ?

*A. (Mrs. Mitter)* Yes, but it is vanishing now.

*Q.* May I know whether your association has done something for popularizing the evil effects of early marriage and early consummation ?

*A. (Mrs. Ahmedshah)* One of the members of our association is the Rani of Mandi and she has done a good deal.

*Q.* Is it one of the objects of your association to deal with these evils ?

*A.* Generally we deal with social questions. We haven't taken this question up particularly.

*Q.* Do you think that any propaganda work is necessary on this account ?

*A.* Yes.

*Q.* Will your association take up this propaganda work ?

*A.* I cannot speak for the Association until I put the matter before them.

*Q.* Have you any experience of rural areas ?

*A.* No.

*Mr. Yakub :* Is it not a fact that according to the Shastras a girl should be married before she attains her age ?

*A. (Mrs. Mitter)* That is what I hear.

*Q.* Don't you think that if a law was enacted raising the age of marriage, it will be considered as an interference with their religion by the religious inclined people ?

*A. (Mrs. Ahmedshah)* I asked the University Professor here about this question. He is an orthodox gentleman. He gave me some quotations from Manu and he said that inspite of these laws which have been laid down in the past, people at the present day do not so much pay heed to them and do not follow them now.

*Q.* Do you mean to say that the Hindus have discarded their religion ?

*A.* I have not said that. I say that so far as this question is concerned, this was only a social law. It means that there has been an evolution of the society.

*Q.* If you think that early marriage is an evil, can you give me the reason why your association has not taken any steps to eradicate this evil as yet ?

*A.* Our association is not even a year old.

*Q.* Don't you think that it will be a very good thing if you take an oath from your members that they will not allow to have any early marriages in their families or at any rate they will not join any such early marriages or they will not be parties to such marriages ?

*A. (Mrs. Ahmedshah)* Yes.

*Q.* Are you prepared to take a declaration to this effect from the members of your association ?

*A.* I am perfectly willing to put this matter before the association and I am sure they will agree to this suggestion.

*Q.* For the infringement of marriage law would you also give punishment to the bridegroom ?

*A.* I think that would depend on the age of the bridegroom.

*Q.* Up to what age would you exempt the boy ?

*A.* Up to 18 years.

*Q.* Supposing a boy is 14 and the girl to whom he is married is 18, whom would you punish then ?

*A.* That is not done in Hindu society.

*Q.* If such a case happens whom would you punish ?

*A.* Then the girl would not be educated but if a boy is 18 he would be educated. And you must remember that an educated girl would never do it.

Q. If an educated girl is guilty of the infringement of the law what then ?

A. She should be punished.

Q. And the same punishment should be awarded to the boy ?

A. Yes.

Q. Suppose a mother happens to be the only guardian of the boy and she marries the boy. Will you also give her the same punishment ?

A. Yes.

Q. At present the law is more lenient for mothers. They are not to be punished by anything but fines. If we send the mother to imprisonment who will look after the girl ?

A. We must deal with the mothers more tenderly. If she were ignorant she would not probably know the law.

Q. In the case of father the harm is economic but in the case of a mother other children may die ; who will look after them ?

A. A mother should be dealt with leniently.

Mr. Yakub : If a woman commits theft or she murders anybody she is awarded the same punishment and ignorance of law is not an excuse. Why have exemptions in case of these crimes ?

A. It is also in the welfare of the nation.

Q. Should mothers also be dealt with the same severity ?

A. No.

Q. Don't you think that infant mortality in India is due to bad hygienic conditions and insufficient nourishment especially among the poor people who form the majority in these Provinces ?

A. Girls when they are in the family way do not get sufficient nourishment and the hygienic conditions are also bad.

Q. Infant mortality is due to these conditions rather than early maternity ?

A. It is due to both.

Q. Which of them is greater ?

A. I do not think we can decide that but I don't think you could say that if a girl of tender age became a mother in a very high class family she would escape the evils attendant on that.

Q. I think she might have a better chance ?

A. Her children would be liable to be very delicate.

Q. If a law were enacted to the effect that up to the age of 16 marriages may take place but no girl should be allowed to go to the house of her husband until she attains the age of 16, will that meet your wishes ?

A. It would be very difficult to enforce such a law.

Q. It will also be difficult to enforce the law of the age of consent or for the matter of that the law fixing the age of marriage.

A. I want the registration of marriages.

Q. In the other case also you will have registration of marriages. In the case of Gaona would it be difficult to find out whether the girl was 15 or 16. You would not know by simply registering marriages unless you have very good system of registration of births. Is it not ?

A. Yes, we should have both.

Q. If births are registered you may still know the age of Gaona ?

A. We will have to keep a spy system and it will not be difficult to find out whether she has been to husband's house or not.

Q. Sometimes marriage may take place secretly in that case it will also be difficult to know when a secret marriage took place, is it not ?

A. In India it is not very difficult to know because marriages are celebrated with great pomp and show. Even our servants poor as they are—a man getting Rs. 14, a month—will borrow Rs. 30 or 40. I know my own mali gets that sum. He borrowed some from me and some from a bannia to marry his daughter.

Q. Would you prefer having lady magistrates to try such cases?

A. Yes and the cases should be tried in camera.

Q. Even cases of infringement of marriage law?

A. Yes, even that.

Q. What is the scandal about that?

A. Because that spoils the girl's future.

Q. In the case of marriage law that does not make any difference. A girl ought to have been married at 16 but she is married at 15. It is the fault of her parents.

A. But everybody will know about it.

Q. Then you do not want the names of girls to be known?

A. The authority should know who are going to be punished but it should not be made public because it will be a disgrace on the family.

Q. What disgrace will be on her if she is married a year earlier? The father is responsible, the father-in-law is responsible.

A. There may be cases in which she will have to be examined by court. It should not be given out to the general public.

Mr. Kanhaiya Lal: If the legislature is unable to fix the minimum age for marriage higher than 14, what age would you recommend for consummation?

A. 16.

Q. How will the cases of breaches of the law between 14 and 16 come to light?

A. That is the difficulty, therefore we want it at 16.

Q. In case the legislature fixes 14 for marriage would you have 14 for consummation also?

A. That is too early.

Q. As regards the boy committing a breach of the consummation law would you recommend any exemption up to a certain age?

A. I would punish the boy in any case whether he is below 16 or 18. There should be no exemption.

### Oral evidence of Pandit SALIGRAM SHASTRI, Vaidya, Lucknow.

(Lucknow, 18th January 1929.)

(Vernacular.)

Chairman: Are you a member of the Board of Indian Medicine?

A. Yes.

Q. How long have you been practising?

A. For the last 12 years. In 1907 I was Vedic Professor of the D. A. V. College, Lahore, then I was headmaster at Rishikul (Hardwar). I practised at Bareilly for 3 years and for the last 8 years I am practising at Lucknow.

Q. What age would you recommend for maternity?

A. It should be over 14. In the Ayurvedic books they put down the age of a boy at 25 and that of a girl at 16 but that was at the time when the age was considered to be 100 years; those people were physically very healthy. I have experience of schools and colleges and I think that by postponing till 25 years boys

will go wrong. According to the present conditions I consider that boys should not be married before 18 and girls before 14. Vagbhat has recommended full 16 years for girls and Sushrat recommends that there should be no consummation before 16. If we fix the age of marriage at 14 and the law of consummation at 15 maternity will take place one or two years later.

*Q.* When you say that the people are getting weaker and weaker the age should be raised and not reduced, is it not ?

*A.* According to Shastras it is 16 years but marriages take place at 10 and 11. For the sake of compromise I recommend that it should be something after 14.

*Q.* The present law of consent within marital cases is 13, do you think it is broken, i.e., consummations take place in some cases before 13 complete ?

*A.* Yes. It takes place in many cases.

*Q.* Do you want the age of marriage to be fixed or the age of consent to be raised ?

*A.* Age of consent will not be effective, therefore I recommend that marriage age should be fixed.

*Q.* What age would you fix for marriage ?

*A.* According to Dharmashastras a girl should be married before puberty and all girls attain puberty before 16, therefore the orthodox communities would not like it but there will be no objection if the age is fixed at 12. Gaona should take place 3 years later and in the meantime the girl should not be sent to the husband's house.

*Q.* What is generally the age of puberty ?

*A.* 12 years.

*Q.* Have you seen mothers of 14 or 15 ?

*A.* Yes.

*Q.* Have you seen mothers of 13 ?

*A.* I have seen even at 12 or 11. The brother of the Maharaja of Dharbhanga was born when the girl was 11 years old. In Bengal girls become mothers at 11 or 12 but in the U. P. there are very few cases.

*Q.* What is the condition of children of mothers at 13, or 14 ?

*A.* They themselves are sickly and children are also weak. Children suffer from rickets and mothers suffer from consumption.

*Mrs. Beadon :* Can you give us any concrete examples of girls who may have received injuries due to early consummation or early maternity ?

*A.* Among the Rastogis who are rich people a girl between 12 and 13 had a child. The baby died and the mother got puritan fever and leucorrhœa. The mother died six months after.

*Q.* Have you seen any cases among the Mohamedans ?

*A.* Among the lower classes of Mohamedans where they become mothers at an early age, they suffer more because of the insanitary surroundings.

*Q.* Among the Mohamedans marriages are late, therefore they become mothers at a late age, is it so ?

*A.* Among them boys are married late but girls are married at 11 or 12. I have seen 3 or 4 cases myself. On account of disparity of ages girls suffer more.

*Mrs. Nehru :* What is your experience of Punjab—have you seen mothers at 13 or 14 ?

*A.* I was not practising in the Punjab but there such cases are rare.

*Q.* Among what classes here early marriages take place ?

*A.* Among the lower classes ; e.g., Khaticks. Among them even six months old girls and one year old boys are married.

**Q.** Among these lower classes when marriages take place early, do they wait till the attainment of puberty ?

**A.** They do not take puberty into consideration but gaona takes place even before puberty.

**Q.** Is it not considered bad ?

**A.** Among the higher classes it is considered bad and they take care that it does not take place before puberty. In the case of lower classes on account of economic causes it takes place before puberty and it is not considered a sin. Gaona and consummation has no connection, consummation may not take place after gaona.

**Q.** For consummation, is attainment of puberty considered necessary ?

**A.** I cannot say.

**Q.** Do you want any punishment for breach of marriage law and consent law ?

**A.** Yes.

**Q.** What punishment would you like to have ?

**A.** There should be something deterrent ; there may be fine and punishment for one month.

**Mr. Mitra :** Have you been in Bengal ?

**A.** Yes. I was at Chandranagar for one year.

**Q.** Do you know when girls attain puberty there ?

**A.** They attain puberty earlier than here.

**Q.** Do they marry early also ?

**A.** Yes.

**Q.** Do you know if consummation takes place before puberty ?

**A.** I have no experience ; I cannot say.

**Q.** You suggest 12 as age of marriage as a first step ?

**A.** Yes.

**Q.** It may be raised gradually ?

**A.** In the Dharmasastra marriage before puberty is prescribed and if this is stopped people will object.

**Q.** If among the Bengalis marriage below 12 is prohibited don't you think there will be opposition because there as you say girls attain puberty at 12 and they believe that it should be a pre-puberty marriage ?

**A.** Personally I am in favour of fixing it at 14 for marriage but as a compromise to the orthodox people I suggest 12. I do not mind even if you fix it at 15 but I want to keep off agitation

**Q.** What age do you recommend for extra-marital cases ?

**A.** I would prefer 18 but least it should be 16.

**Mr. Shah Nawaz :** If you fix the marriage law at 12 and the consent law at 15, then sending of the girl to the husband's house should be penalised. Do you think it will be effective ?

**A.** It will not be effective but it will have some fear.

**Q.** As it will not be effective why not fix the marriage age at 15 ?

**A.** People will oppose it.

**Q.** What percentage of people would be affected thereby ?

**A.** Orthodox people have got a large mass of following.

**Q.** What measures should be adopted to bring cases of breach of consent law ?

**A.** I cannot suggest anything but the law will have an educative effect.

**Mr. Bhargava :** Is the ceremony of gaona common here ?

**A.** It is not so common. In the case of those people who marry late gaona does not take place.



Q. Among the lower classes is there no gaona ?

A. It is not common.

Q. When you penalise going of the girl from 12 to 15 to the husband's house don't you think you will be forcing the custom of gaona among the people ?

A. I am suggesting it because if you fix the marriage at 12 there will be less opposition and you will be able to educate the people but if you fix it 15 there will be great opposition.

Q. On the one side there is the same opposition and an ineffective law and on the other side there is a little more opposition but the law is effective. Would you like the Government to make that law ?

A. Do you think the Government would make such a law. I think Government shelve the question by appointing committees. Dharmshastra says that you should not cross the seas but during the war thousands of people were sent overseas and nobody objected to it.

Q. Can you tell me from what time the ceremony of gaona came into vogue ?

A. It is an old custom.

Q. Is it mentioned in the Dharmshastras ?

A. No.

Q. It came into the Jotish books which are of recent origin. From the Vedas can you tell us any sloka showing that marriages used to take place before puberty ?

A. I cannot tell you about the Vedas but it is in the smritis.

Q. In the smritis there are so many contradictory texts that they are said to have been interpolated. Suppose we make a law for *apat kal* only, will it be accepted ?

A. If such a law is made it will remain just as Dharmashastra was made for the *apat kal* but it remains in force.

**Written Statement dated 6th January, 1929 of Dr. Miss MURPHY,  
W.M.S., Medical Officer-in-charge, Dufferin Hospital, Lucknow.**

5. The usual age at which girls attain puberty—

Hindus	.	.	.	.	.	.	.	.	12 to 15 years.
Muslims	.	.	.	.	.	.	.	.	13 to 15 years.

6. Cohabitation appears to be common among the majority of Hindus and Moslems seen in hospital soon after puberty, i.e., at about 13 years of age. If puberty is delayed, cohabitation may occur before puberty.

8. The Gaona ceremony is usually performed just *anterio* to the consummation of marriage and soon after the attainment of puberty. Some patients stated it was performed a year or more before puberty.

9. No. I consider a girl should be at least 16 years of age before consummation of marriage.

11. In other parts of India I have come across cases in which cohabitation before puberty, i.e., in girls of from 9 to 12 years has resulted in extensive rupture of the perineum and laceration of the vagina, in some cases producing vital incontinence.

12. Yes, early consummation is responsible for high maternal and infantile mortality owing to the immaturity of the mothers and their ignorance of how to look after their infants. Early maternity also interferes with, or precludes education of mothers, and thus reacts unfavourably on their homes and families and renders them unfit to be true companions to their husbands.

21. I should prefer to rely on the progress of social reform by means of education and social propaganda.

**Oral evidence of Miss MURPHY, W.M.S., Lady Doctor in charge, Dufferin Hospital, Lucknow.**

(Lucknow, 18th January 1929).

*Mrs. Beadon* : Are you in charge of the Dufferin Hospital, Lucknow ?

*A.* Yes.

*Q.* How long have you been in charge ?

*A.* Since April 1928.

*Q.* Before that where were you working ?

*A.* In the Lady Hardinge College, Delhi.

*Q.* How long were you there ?

*A.* I was there from 1917 to 1925 as Professor of Anatomy. After that I was at Shikarpur (Sindh) from 1925 to 1928.

*Q.* How many patients have you had at Shikarpur ?

*A.* About 40 a year.

*Q.* Did you find that child marriage was prevalent there ?

*A.* It was prevalent there and it is prevalent here also.

*Q.* What age generally do you find here ?

*A.* We get cases from 13 to 14.

*Q.* Have you had mothers of 13 in hospital ?

*A.* Yes.

*Q.* About how many mothers of 13 have you seen during your experience ?

*A.* They are few in number and it is not the rule.

*Q.* Below 14 ?

*A.* I have seen mothers at 15, they are common.

*Q.* What about those young mothers—do they go through labour fairly well or have they difficulty ?

*A.* Some of them have difficulty and some of them have normal labour. I have seen a girl of 13 having a normal labour but some are instrumental cases.

*Q.* Do you think that girls of 13 have more difficulty than girls of 15 or 16 or is there no appreciable difference in these ages ?

*A.* Girls of 13 have more difficulty.

*Q.* Do you find such trouble as cancer attacking these girls ?

*A.* No, I have not seen. We have had three or four cases since I came here.

*Q.* Did you get any osteo-malacia in Shikarpur ?

*A.* No, there the girls are well developed. Normally I think they have no such trouble as in other parts such as Delhi or here.

*Q.* Were they Mohamedans or Hindus ?

*A.* Mohamedans as well as Hindus. They are rich people and well fed.

*Q.* Do girls who are consummated early and who do not become pregnant suffer in any particular way ?

*A.* Yes. I have seen tearing and rupture.

*Q.* How many cases have you seen of tearing ?

*A.* It is difficult to go back ; since I was practising in Sindh I saw three or four cases.

**Q.** Could you remember what the girl's age was ?

**A.** I do not know at what age it occurred. They came to me later and I saw the result. I think marriage had been consummated at a very early age. But I have seen complete rupture of the perineum after pregnancy.

**Q.** Apart from physical injury have you noticed that there is any mental shock or trouble ? Do they suffer more often physically or mentally ?

**A.** The cases I saw, were of physical injury. I have not seen cases of mental trouble.

**Q.** Have you been able to follow up any particular case and can you say how the children fare afterwards ?

**A.** No, it has not been possible to follow any cases.

**Q.** What do you think about the children when they are born ? Are they necessarily weaker ?

**A.** The effect of instrumental and prolonged labour is deleterious to the child.

**Q.** Have you seen much of sterility among these girls ? Do you think there is greater likelihood of one child sterility among younger girls than older girls ?

**A.** It is more likely among younger girls. I have seen quite young girls who have suffered and their husbands have put them aside because of sterility.

**Q.** Was the cause of sterility sepsis or gonorrhœa ?

**A.** Yes.

**Q.** You see they are put aside on that account ?

**A.** I have seen that.

**Q.** Many or one or two cases ?

**A.** A few cases.

**Q.** Women of any age may be put aside. Are there more cases among young women ?

**A.** I could not say.

**Q.** What age do you think will be safe for maternity ?

**A.** About 16 years.

**Q.** You say the usual age at which girls attain puberty among Hindus is between 12 and 15. Is 15 not rather high ?

**A.** I took a series of cases and I found that they were most frequent years. There were some cases beginning at 11, but most of them were 12.

**Q.** Do you think apart from instrumental labour perineal tears are common ? Some people tell us that the girl's parts are elastic and so they do not tear.

**A.** I have seen some bad tears.

**Q.** Apart from forceps ?

**A.** Yes. In later life they suffer from prolapse as a result of tears.

**Q.** In question No. 11 you say you have come across cases of cohabitation between 9 to 12 and there has been extensive rupture of the perineum. Is that what you are referring to in later life ?

**A.** I have seen some girls at 9.

**Q.** Was that a marital case ?

**A.** It was an extra-marital case.

**Mrs. Nehru :** In your statement you have said that some of your patients have told you that their marriage was consummated before puberty. Which class of people were they ?

**A.** Hindus and Mohamadans both.

**Q.** Were they from the poor classes ?

**A.** Yes.

**Q.** Were they very few in number ?

A. Quite a fair number.

Q. Is it in Lucknow only ?

A. In Lucknow. I only asked these questions after I received the questionnaire.

Q. Can you tell me whether you come across younger mothers here at Lucknow or at Shikarpur ?

A. I have seen younger mothers in Shikarpur.

Q. What was the age of the youngest mother that you saw ?

A. That was a girl of 12.

Q. What was the caste of the girl ?

A. Hindu.

Q. In that part does puberty come earlier than here ?

A. I don't think so.

Q. The ages being equal you say younger mothers are more there ?

A. Yes.

Q. Do you put it to the development of the girl ?

A. Yes.

Q. What is the reason of the age of puberty being different among Hindus and Mohamaddans ?

A. My series is not big enough. Those were the commonest ages. Possibly if you take a longer series and for a longer period you may get different results.

Q. Have you been taking notes for very long ?

A. Only after I received the questionnaire.

Q. Have you noticed that the children of younger mothers are, at the time of birth, weaker ?

A. Some of them are because of prolonged and instrumental labour.

Q. Are you of opinion that younger mothers go through prolonged labour more than the older mothers ?

A. I have seen that.

Q. Was that on account of their being young ?

A. I think so.

Q. And then those children whom you have seen to be very weak are weak on account of their being children of young mothers, is it so ?

A. I think it is more due to the difficulty of being born.

Q. Otherwise you don't think that the physique of the child suffers on account of the mother being young ?

A. No, I don't think. I think if the child is born easily it would not suffer.

Q. Have you noticed any difference between the later born children and the earlier born children ?

A. I am afraid I have not considered that.

Mr. Mitra : Is the age of puberty amongst Europeans the same ?

A. I think it is more. Between 13 and 15 it is.

Q. Do you think that sometime should elapse between puberty and consummation ?

A. I think so.

Q. What is the period that you would like to elapse ?

A. At least 3 years, I should say.

Q. What do you think is the ideal age for consummation ?

A. 16 is the earliest.

*Q.* But what is the ideal ? Not before 18 ?

*A.* Certainly.

*Q.* There is some idea that first child-birth after a certain age is difficult. What would you put that age ?

*A.* I think, 30.

*Mr. Bhargava :* You have given the age of puberty among Hindu girls between 12 and 15. Will you say that girls of the rural areas mature later than the city girls ?

*A.* I have not considered that. I gave that period as the commonest period. It is different among different communities. Largest number of cases occur at that age.

*Q.* Will it be correct to say that those persons who earn their living by doing manual labour generally mature later ?

*A.* I should think so.

*Q.* In answer to question 21 you say, 'I should prefer to rely on the progress of social reform by means of education and social propaganda'. May I know why do you think so ?

*A.* Because I thought the ignorant would suffer more than they deserve.

*Q.* But so far as the point of effectiveness is concerned legislation would be more effective ?

*A.* Effective at the cost of good deal of suffering.

*Q.* Would you like that both things should go hand in hand, lenient punishment accompanied by propaganda ?

*A.* If there was some leniency with the uneducated that would be better.

*Q.* Supposing there was only fine, would you prefer a law of that type ?

*A.* I would prefer not to answer that question.

*Q.* Can you say second and third child of a mother is generally more physically developed and more intelligent ?

*A.* I am not sure about that.

*Q.* Is tuberculosis on the increase ?

*A.* We certainly see larger number of cases than before but whether it is on account of the fact that it is on the increase or that we see more cases I can't say.

*Q.* Has it got any connection with early maternity ?

*A.* There is strain in case of early maternity but I think it is more due to other causes.

*Q.* Can you say how would you isolate early maternity from the other causes which result in deterioration of the health ?

*A.* Early maternity affects the health badly. She may get ruptures, perinial tears and this in later life may lead to displacement of the womb. In that way she suffers. She gets flabby muscles, and all these conditions are brought about.

*Q.* Then you say the evil is too great and we should not mind any other consequences and enact the law ?

*A.* I certainly think it is a very great evil by itself.

*Chairman :* Take a girl who becomes mother at 14. She has no frequent pregnancies, she has got healthy surroundings and has got medical aid available. Do you think she will stand to suffer, because of becoming mother at 14 and of no other cause, in future life ?

*A.* If she is a fully developed girl she may not suffer. There are so many variations. Some girls are quite developed at 14.

*Q.* But most girls are not so ?

*A.* No.

Q. So in many cases it is a very important cause, is it not ?

A. I think so.

Mr. Kanhaiya Lal : Can you tell us whether the babies born of mothers at 13, 14 or 15 are below the normal weight and size as compared with the babies of older mothers ?

A. I am afraid I can't tell you. I have not made a record.

Q. But a record is kept in the hospital ?

A. Yes.

Q. Can you send us the figures then ?

A. (The witness promised to send the figures).

Q. Can you tell us why there is difference in the age of puberty between Mohamadan girls and Hindu girls and also why there is difference as regards the weight of babies and general health and strength ?

A. I can't say definitely.

Q. You recommend 16 as the age for marriage and consummation ?

A. Yes, not under 16. It may be higher.

Q. Can you suggest any measures for bringing cases of breaches of the law to light ?

A. I can't suggest any.

Q. If these cases come to the notice of medical men and women would they help us by bringing these cases to light ?

A. You will stop patients from coming to hospitals.

Q. If a confidential report is made ?

A. Medical men would not interfere. People would get to know and the hospitals would be empty.

Q. Then what other measures can be adopted ?

A. It is for the lawyers to find out.

### Oral evidence of Raja SURAJ BAKSH SINGH.

(Vernacular.)

Chairman : Are you a member of the Executive Committee of the British Indian Association ?

A. Yes.

Q. And also President of that association ?

A. Yes.

Q. Have you been connected with other social and political activities in the country ?

A. Yes.

Q. Are you connected with the Hindu Sabha ?

A. I am a member of that, and I am connected also with other incidental activities.

Q. Has your father made a big trust in favour of his temples ?

A. Yes.

Q. You are also running a Sanskrit school ?

A. I am running a Sanskrit and English school at Kamlapur, District Sitapur.

Q. In your part of the country do girls become mothers at 13 ?

A. I have not seen girls becoming mothers at that age but marriages have no doubt taken place at that age.

Q. Has any girl become mother between 13 and 14 ?

A. I remember one.

Q. Any between 14 and 15 ?

A. Many.

Q. Does consummation take place below 13 ?

A. No. Among the Kshatriyas marriages take place late at 16 or 17.

Q. Are there many cases like that ?

A. Yes.

Q. Are there any marriages below that age ?

A. I have not heard of any case among the Kshatriyas. I know of one case where the girl was married at 11. It was 35 years back.

Q. In what community do the marriages take place early ?

A. Among the Shudras.

Q. Whose number is more, the Kshatriyas or the Shudras ?

A. Shudras.

Q. Is there a custom of Gaona among them ?

A. There is.

Q. Does not the Gaona take place till the girl attains puberty ?

A. The idea of Gaona is that consummation should not take place before a girl is fully grown up. But that is not the practice. Sometimes Gaona takes place before puberty.

Q. Does consummation take place before puberty ?

A. I can't say.

Q. Have you compared the girls of your community with the girls of Shudras ?

A. The mothers suffer and they are weak. Progeny is prejudicially affected. This is not so among the Kshatriyas.

Q. Kshatriyas are included in the category of Dwijas ?

A. They rank second in that category.

Q. Even then you don't think there is any Shastric injunction that the girl must be married before puberty ?

A. There is no such rule. We do not recognise it.

Q. What is the reason of early marriage among the Shudras. Is it custom or economic causes ?

A. The parents are fond of seeing their children married early, or it may be on account of economic causes also. They will be saved the expense of maintaining their girls.

Q. Is there any danger of the girls going wrong if the age of marriage is raised ?

A. There is no reason for such apprehension either among the higher classes or among the lower classes whatever the age limit of marriage may be.

Q. Have you known of any cases in which injury has resulted either to the child or the mother as a result of early consummation ?

A. That the mothers are weak anybody can see, but I can't give any concrete cases.

Q. Would you therefore like to have a law to stop these evil consequences ?

A. I am in favour of a law of marriage.

Q. What age would you fix ?

A. 15 for girls and 17 for boys.

Q. Is the age of consent law standing at 13 broken ?

A. No, I don't think.

Q. Do people know the law ?

A. No. I myself did not know about it till recently. Even an advocate whom I asked about it did not know.

Q. Are you in favour of increasing the age of consent ?

A. There must be only marriage law. It will have a great moral effect and by and by marriages will be postponed. That 'exception' under section 375, I. P. C., may be deleted when the marriage law is passed.

Q. Will there be any agitation among the orthodox people if the marriage law is passed ?

A. Nobody will resent. If it is gradually done nobody will object. In fact when the people of my Taluqa know that I had to go to give evidence before this Committee they all said that the age of marriage of a girl should be fixed at 15.

*Mrs. Nehru* : Is the age of marriage rising ?

A. Yes.

Q. What about the age of consummation ?

A. I can't say.

Q. Are there any castes among whom consummation before puberty is considered to be a sin ?

A. I can't say.

Q. Do men also want that the girl should go to the father-in-law's house soon and married early ?

A. Men also want that they should see the wives of their children in their houses soon.

Q. Have you seen any case of struggle between the husband and wife about the early marriage of the girl ?

A. I don't know.

*Mr. Md. Yakub* : Don't you think that this desire of early marriage and early consummation is more among the women than among the men ?

A. Yes.

Q. Especially the old women ?

A. Yes.

*Mrs. Nehru* : If the age of marriage law is not possible would you like to raise the age of consent ?

A. It will be very sad indeed if the minimum age of marriage is not fixed. An increase in the age of consent will not only be good but it will be bad.

Q. If the age of marriage law is not passed will you make any change in the age of consent Law ?

A. I am not in favour of increasing the age.

Q. Have you met any cases of rape outside the marital state ?

A. I do not remember any case.

Q. Are you ready to provide exemptions in your marriage law in suitable cases, for instance, an orthodox man may sincerely believe that it is against his Shastras not to marry his daughter before puberty.

A. I am not in favour of providing exemptions.

Q. What punishment would you propose ?

A. There should be a penalty provided and the court should decide the amount according to the financial status of the man. The Walterkrit Sabha has passed a resolution fixing the age of marriage at a certain limit and that resolution is carried into effect. A penalty is also provided. It is a sort of self-imposed law which is fully obeyed in Rajputana.

Q. Who should be punished ?



A. The parents and the guardians and all those who are accomplices should be punished.

Q. What about the "purohit" ?

A. He is only brought in for the purpose. He should not be punished.

Q. Would you punish the mother also ?

A. When there is no father she may be punished. What I want is that the man should not be dubbed as a criminal after the punishment. It may be made a civil case.

Mr. Shah Nawaz : Who will be the complainant in the case of a breach of the law ?

A. Any man from the community.

Q. Will you find men from the community who will be prepared to make the complaint ?

A. In the case of the Waqf Law we see that the complaints are being made. The public spirited people will come forward and lodge complaints.

Q. Are you not in favour of simple imprisonment even ?

A. I have not considered all these details. I want that the man should not be branded as a criminal.

Q. Supposing the law of marriage is broken and the marriage takes place below the prescribed age and consummation may follow, would you not like that to prevent such cases the Consent Law should be passed ?

A. I don't want to touch the age of consent Law.

Q. Would not the object of the law be defeated ?

A. There will not be many such cases and gradually they will stop.

Mr. Bhargava : Is there a custom of second marriage in your parts of the country ?

A. There is.

Q. Are there many unequal marriages ?

A. I can't give you the percentage. There are not many such cases.

Q. If there are cases of unequal marriages, a fine of one or two hundred rupees will be nothing. Without a Consent Law how would you save the girls of 13 and 14 ?

A. When there is a law of marriage that won't happen.

Q. What is the difficulty in fixing the age of consent at 15 when you are in favour of fixing the age of marriage at that limit ?

A. People won't know the law.

Q. How will they know the age of marriage law ?

A. It will be a simple law and many people will know it. Lectures will be given and gradually the rural area people will also know it.

Q. By not making the offence a criminal offence you mean that the man should not be sent to the jail to which the ordinary prisoners go ?

A. No. I mean the man should not be considered as having undergone some punishment and treated as a criminal.

Q. You don't want even that much punishment ?

A. The man will be insulted enough in the society.

Q. In Baroda there is a law and we are told that the people don't mind the fine at all. In a part of the country where 80 per cent. of the marriages are celebrated early do you think fine will be sufficiently deterrent ?

A. No drastic step should be taken.

Q. Are these people who marry girls early under the influence of Brahmins or is it on account of custom ?

A. It is custom.

Mr. Yakub : According to the Shastras is there any age fixed for marriage ?

A. I can't say.

Q. Will there be no agitation on the ground that Government by enacting this law has interfered with the religion of the people ?

A. No. People are in fact very glad to learn that child marriage is going to be abolished by law. Out of the Endorsement Fund created by my revered father some money is given to every Brahmin as a contribution towards the marriage expenses. The Trust Committee has now made a rule by unanimous consent that no application will be considered where the girl to be married is less than 14 and the boy less than 16.

Q. Instead of the ordinary courts trying these cases would you like to have a matrimonial court consisting of a magistrate and two non-officials ?

A. I am against multiplication of courts.

Q. But such courts will only sit when some cases of this nature occur ?

A. The ordinary regular courts would do.

Q. Is the system of birth registration complete ?

A. It is not. There are inaccuracies.

Q. What improvements would you suggest to make it more accurate ?

A. The present system should be strictly enforced.

Q. At present no name of the child is entered in the register as the name is not immediately given on birth. Would you like that the parents be asked to submit a supplementary report when the name has been given ?

A. Yes.

Q. Would you also be in favour of registration of marriages ?

A. Yes.

Q. Who should be the registering authority ?

A. There need be no separate department. The same authority that keeps the birth register may keep that also.

Q. The obligation to report will be on the parents ?

A. Yes.

Q. The register will be kept in the District headquarters. Will it not be very distant for the villagers to go and report ?

A. The register is kept in the "Thana", Police station.

Q. Would you like to have any fee for registration ?

A. I have not thought over that question.

Q. Would you place the obligation to report on the priest also ?

A. There is no need.

Mr. Kanhaiya Lal : Would you be in favour of issuing a free marriage certificate to the reporting individual ?

A. It is a good idea.

Q. Would you like a similar certificate in the case of registration of birth also ?

A. Yes, I like it.

**Written Statement, dated 5th January 1929, of the Hon'ble Raja Sir RAMPAL SINGH, K.C.I.E., Raj Kurri-Sudauli, District Rai Bareilly, Oudh.**

1. There is undoubtedly dissatisfaction amongst the educated classes with the law as to the age of consent as it at present exists. They desire an advance in both

cases in marital and non-marital. The masses do not know what the law is as to the age of consent but their general tendency is perceivable as they have begun to delay celebration of marriages to some extent and to appreciate that early consummation of marriage is harmful. This is due greatly to social reform movements in the country.

2. In my opinion an advance on the present law is desirable in both cases, I mean in marital and non-marital connection. In marital connection age of consent should be not less than 14 years. As some consciousness is gradually creeping amongst the masses as to the harmful effect of early consummation of marriages, it is desirable in my opinion that the law of the land should not be allowed to lag behind but should advance further in order to give a proper lead to the people. I am sure that the advance to 14 years in this respect will be appreciated by educated classes and will not be resented by others. I very strongly advocate the raising of the age of consent in non-marital connections to at least 16 years and even to 18 years. This advance in the age will produce a very salutary effect on the marital connection as well and will be highly appreciated by all classes of Indians.

3. I have never studied statistics in this connection but I can say from what I have heard that the crimes mentioned in this question are committed very frequently. I am not in position to state what effect the amendment of the law in 1925 has produced but the raising of the age of consent to 16 or 18 years in non-marital connections will surely eradicate a great deal of the evil that at present exists in the society by preventing and reducing cases of such offences.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has certainly improved matters to a certain extent in all three directions mentioned in this question. I now think that the time has come to raise the age from 13 years to 14 years.

5. The age of puberty amongst girls in this part of the country varies between 12 and 15 years. It depends upon different circumstances.

6. I have no definite knowledge.

7. I have no knowledge of any religious injunction for the early consummation of marriage and I do not believe that such consummation takes place in pursuance of any religious injunction.

8. People know the name of "Gaona" and "Garbhadhan" ceremonies which are separate ones. The former is observed though not always, and the latter is practically extinct. Amongst the high class Kshatriyas who marry their daughters late the Gaona ceremony is not always performed but amongst the lower classes the Gaona ceremony is invariably performed but it means nothing and has nothing to do with the consummation of marriage. The Gaona ceremony is performed sometimes a day after the marriage, a year after the marriage, three after the marriage, 5 years after the marriage and so on without any regard to the attainment of puberty.

9. I am not in a position to reply to this question in any definite manner but from common sense I can say that the attainment of puberty is not an indication of physical maturity in a girl.

10. In my opinion not before 18 years. I have recommended 14 years for the age of consent in marital connections simply because I am an advocate of gradual reform and do not desire any drastic action to improve the present state of things.

11. I am not in a position to reply this question, but in a general way I can say from what I have observed that the depreciated health condition of our woman-folk and the great infant mortality are due to some extent, if not to a great extent, to this evil.

12. No reply is needed to this question.

13. Certainly there is a considerable amount of public opinion in favour of the raising of the age of consent in marital and extra marital cases to the ages I have recommended above. As observed above this opinion is generally held by educated classes but even the masses will unanimously hail the extension of the age of con-

sent in extra-marital cases because there is great dissatisfaction amongst them with the law as it stands.

14. Yes. This is because they do not realise fully the consequences owing to their illiteracy and immaturity of judgment.

15. No answer.

16. No answer.

17. It should be much better if extra-marital and marital offences be separated. I would certainly recommend higher punishment for extra-marital offences than for marital offences.

18. No answer.

19. No answer.

20. To the first part of the question my reply is in the negative. It depends upon the minimum age of marriage that may be fixed by legislation. If the minimum age for marriage is fixed 14 years it would be more effective than the penal legislation. If it is fixed lower than that then penal legislation fixing a higher age of consent is desirable.

21. I would advocate both—the one will strengthen the other.

### Oral evidence of the Hon'ble Raja Sir RAMPAL SINGH, Lucknow.

(Lucknow, 18th January 1929.)

*Chairman :* Were you for many years the President of the British Indian Association ?

A. Yes, I was.

Q. Are you a member of the Council of State ?

A. Yes.

Q. Were you the President of the Hindu Sabha ?

A. I was the President of the Oudh Hindu Sabha for many years.

Q. Are you connected with any social reform movement ?

A. I am the President of the U. P. Dharm Rakshini Sabha, Secretary of the Kshatriya Mahasabha and President of the Provincial Kshatriya Sabha.

Q. Have there been any Kshatriya Conferences where this question of early marriage has been considered ?

A. Yes, many times.

Q. Do you remember any resolution that was passed ?

A. There have been no resolutions fixing any higher age but there have been resolutions condemning early marriages.

Q. You are apparently in favour of legislation to check what you consider to be an evil, i.e., early marriage and you would prefer a law fixing the minimum age of marriage, is it so ?

A. Yes.

Q. Your idea seems to be that if the age of marriage is fixed at 14 a penal legislation fixing a higher age of consent will not be necessary ?

A. There should be both laws and both should be at par.

Q. If the age of marriage is less than 14 then should the age of consent be higher ?

A. It should be 14 in marital cases.

Q. And outside marriage ?

A. Not less than 16. I would even go to 18.

**Q.** There is a large class of the orthodox people who hold that they are bound to marry their girls before puberty. Can you suggest any means by which pre-puberty marriage may be permitted and maternity may effectually be postponed to beyond 16 ?

**A.** It is difficult for me to suggest.

**Q.** Supposing we have a law that marriage may be done at any time but the girl should under no circumstances be sent to the husband's house till 16, do you think that will be useful ?

**A.** There will be great difficulty in rural areas. Sometimes the parents die and the girl has to be brought to the husband's house.

**Q.** Do you think this will cause a lot of inconvenience ?

**A.** I think so.

**Q.** Do you think that without the law of marriage the Age of Consent Law would be effective ?

**A.** We do require the marriage law. I don't think the Age of Consent Law by itself will be quite effective.

**Q.** You have not answered Question No. 6. I should like to know whether any consummation takes place before a girl completes her 13th year or before puberty or soon after puberty.

**A.** Before puberty I have not heard of any case.

**Q.** Not even among the lower classes ?

**A.** No.

**Q.** Have you seen any cases soon after puberty ?

**A.** Yes.

**Q.** Before 13 ?

**A.** Now and then we hear some cases.

**Q.** Do you know of any cases in which consummation of marriage takes place irrespective of the girl's attainment of puberty ?

**A.** I don't know of any such cases. Now and then cases come but they are very very exceptional and so small in number as not to attract any attention.

**Q.** Is there any system of Gaona where early marriage takes place ?

**A.** Among the lower classes there is a system of Gaona. Among the higher classes and specially among the Kshatriyas there is no such custom.

**Q.** Does Gaona take place after puberty ?

**A.** It is not so. Sometimes the girl is sent on the 3rd day after marriage. This has no connection with consummation necessarily.

**Q.** Do you think that consummation of marriage of girls below 14 is an evil ?

**A.** Yes.

**Q.** Why do you think it is an evil ?

**A.** Because it is harmful to the society, the mother and the child.

**Q.** Do you know of any cases where it has been an evil ?

**A.** I have come across a number of cases in the rural areas.

**Q.** Do girls in the rural area suffer as much as girls in the cities ?

**A.** I have never compared them, but I think girls in towns also suffer.

**Q.** Do you think that it is an evil of such magnitude that the legislature should introduce and pass a law fixing an age for marriage ?

**A.** Yes. I am definitely of opinion that something should be done. It is my experience that there is a gradual degeneration in the physique generation after generation, and I think it is mainly due to early marriage.

**Q.** Are you 60 now ?

**A.** I am 62.

**Q.** 40 years ago when you were young do you think there were more restrictions, Shastric or otherwise, that were observed in society by which the people controlled themselves with regard to getting progeny? Do you think they were used to be more of self-control in those days?

**A.** As far as my knowledge goes it was so. It might have been due to sentiment or due to other things, but it was there. The elders were then exercising some influence over the younger generation. But I find now that that restriction has gradually lessened or is disappearing.

**Q.** If the law fixes the age of consent at 14 as you suggest and it stands by itself, without a law of marriage, can you suggest any means by which we can make the law effective so that cases might be brought to light and more people might be brought to court?

**A.** I think there will be very great resentment amongst the people because when you pass a law about the age of marriage they will gradually adopt it; but if you take cases under the law of consent to court there will be resentment amongst the people about it and trouble will be seriously accentuated. But if you have the law of marriage they will gradually accustom themselves to it.

**Q.** Do you think that if the Age of Consent Law is put into operation there will be resentment because it will be intruding on the domestic affairs of people?

**A.** Exactly. I think in my part of the country the Kshatriyas would rather commit suicide than go to courts. Now and then marriages do take place amongst them early.

**Mrs. Beadon:** In paragraph 11 you say that the large infantile mortality is due to early marriage. We are told that infantile mortality is largely due to economic causes. Why do you then consider that it is due to early marriage?

**A.** I know some instances in families which are not badly off, but we find that the girls get very much deteriorated.

**Q.** Would you mind giving us one or two cases that might have come to your knowledge without giving us the names. Can you give us the age and caste of the girls?

**A.** I have found these things in some of the Brahmin families. In one case the girl was 12 or 13. She gave birth to a child and I found that after delivery she got worse, and after some two years she died. It might be two or three years ago. Another girl got phthisis.

**Q.** Was that after the first delivery?

**A.** I cannot say that exactly. She got phthisis, and I was told that it was due to early marriage.

**Q.** What about the children of these young mothers?

**A.** I do not find them to be robust. I have not studied the question, but I have found that although the circumstances of the people were not bad, yet the children were bad.

**Chairman:** Do you think the dissatisfaction amongst the orthodox classes would be very considerable if a law of marriage is passed?

**A.** No; it will not be considerable; at least not amongst the rural areas.

**Mrs. Nehru:** Is the marriage age amongst the Brahmins high now-a-days?

**A.** Not so high. It is 12 and 13; sometimes it is 8 and 10.

**Q.** Is there any difference amongst high class Brahmins and low class?

**A.** I have found cases where girls were married at 14 and 15 amongst the Brahmins also.

**Q.** Is it out of necessity or by choice?

**A.** It is not out of choice, but out of necessity. Sometimes they do not find dowry enough to pay. But generally marriages amongst Brahmins take place early.

Q. Is that the same amongst the well-to-do and the poorer classes ?

A. Yes.

Q. Do they still believe in the sanctity of pre-puberty marriages ?

A. No.

Q. Then why do they marry their girls early ?

A. It is due to custom. I think there is nothing religious in it, but it is only a sentiment. They have been following this custom without thinking over it.

Q. Is that belief declining now ?

A. Yes.

Q. Amongst the Brahmins is it considered a sin to consummate marriages of girls before puberty ?

A. I do not know what is the belief amongst the Brahmins. I have never enquired about it. But as far as my knowledge goes marriages amongst them are not consummated before puberty.

Q. Do they look upon it as a sin ?

A. I cannot say that.

Q. You say that there is a very great deal of physical deterioration now. Is there deterioration in the intellect also, or is it confined to the body alone ?

A. I cannot say if there is deterioration in the intellect also, because there is not much of education amongst the people I have come across, namely Mazdurs.

Q. Do you find physical deterioration ?

A. Yes.

Q. Is it found in all classes, or is it found only amongst the well-to-do classes ?

A. Amongst all classes.

Q. Amongst the Kshatriyas ?

A. It is not so much. But they have taken to late marriages only now. Formerly there used to be early marriages amongst them also.

Q. Amongst the Kayasthas ?

A. They marry late.

Q. Is there deterioration amongst the Kayasthas also ?

A. I cannot say ; but they also have adopted this practice only recently.

Q. You said that there is no restriction now in ordinary daily life. Is it confined to the educated classes alone or is it found in the villages also ?

A. Formerly people had great respect for their elders and they used to exercise restriction over themselves. But now I find that everybody wants to be free, and they do not care for elderly men in their own community.

Q. In the villages do you think both illiterate and literate people are so ?

A. Yes.

Q. Are there many girl schools in the districts here ?

A. No.

Q. Is purdah observed in the districts ?

A. Yes ; it is observed mainly amongst the higher and the richer classes. My experience is that the Brahmins were not formerly observing purdah, but now as soon as they become rich they begin to observe purdah. The same is the case with Kshatriyas in the rural areas.

Q. Are there any people in the villages who observe purdah ?

A. Yes ; people who are in good condition. You will be surprised to find in the same family the women-folk of one brother observing purdah, while the women-folk of another are not observing it.

Q. Is it the result of education or is it the contrary ?

A. These people think that they will command greater respect if they took to purdah. Otherwise there is not much purdah here.

Q. What is your reason for saying that this Amendment of 1925 has improved matters in all the three ways that have been mentioned by you in your reply.

A. I have said in my statement that most people in the rural areas do not know what the law on the subject is. But there is a general trend towards raising the age of marriage on account of several causes. There has been some effect on account of this law also, because those who have some knowledge of the law take advantage of it.

Q. Generally has that not been by other causes? Are there a great many people who know the law?

A. I cannot say that it is a large percentage. It may be very small.

Mr. Mitra : You say that there are sometimes late marriages amongst Brahmins. Are they after puberty?

A. I cannot say that.

Q. Is any attempt made to conceal puberty in these cases?

A. I cannot say that, because they are all family matters. But I have heard that marriages have taken place at the age of 14 and 15. Some of them happened in my own village.

Q. Was any attempt made on the part of the other Brahmins to put social pressure?

A. There was nothing of that sort. There is sometimes a mere talk, but I do not think there is much feeling about the subject.

Q. Is there dowry system here?

A. Yes. The amount of the dowry depends upon several circumstances. Amongst the Kshatriyas the girl's father has to pay lakhs and lakhs. It is said that the Balrampur state paid Rs. 5 lakhs as dowry in a recent marriage with Tipperah.

Q. But it cannot be dowry.

A. It is a dowry, because the thing is settled beforehand. I can cite hundreds of such instances.

Q. Do you think that if the age of marriage is fixed at 14 it will act as a check against the dowry system?

A. I cannot say; but it may produce a good result.

Q. What punishment would you suggest for the infringement of the marriage law?

A. I think simple imprisonment may be given. But I think lawyers will be better able to answer this.

Q. Do you think this marriage law will be passed in the Legislative Assembly?

A. If Government does not oppose it I think it will be passed.

Mr. Bhargava : What is the population of Kshatriyas in this Province? Is it considerable?

A. I cannot say of the province as a whole, but in my own district the total population is about a million, and the number of Kshatriyas will be about seventy thousand.

Q. Do they cultivate their own lands?

A. Some families who consider that they belong to high class do not cultivate otherwise there are cultivators amongst us also.

Q. What is the custom amongst these cultivators? Do they observe post-puberty marriages?

A. They have post-puberty marriages.

Q. You say that this custom of late marriages amongst you is of recent origin. How old is the custom?



A. Since the last 30 years.

Q. Before 30 years marriages took place as in the other classes ?

A. Yes.

Q. Excluding the dowry what other causes raised the age of marriage amongst you ?

A. There are difficulties in negotiating marriages. Amongst my own caste they have to marry girls in Rajputana whether they are rich or poor.

Q. Practically speaking it is due to the difficulty of finding proper bridegrooms ?

A. It is one of the causes.

Q. But it is perceivable everywhere. Is there a system of Gaona amongst you ?

A. No ; but sometimes it may be.

Q. Amongst the Brahmins, Baniyas and others who practise early marriages, do you think Gaona is dying ?

A. Yes ; but not amongst the lower classes.

Q. Sometimes Gaona does take place on the very day on which marriage takes place ?

A. Yes ; amongst the lower classes ?

Q. If the age of marriage is rising may I take it that the age of consent is going down because Gaona is disappearing ?

A. By Gaona do you mean consummation of marriage ?

Q. By Gaona I mean the ceremony after which the girl is taken away to the house of the boy.

A. I know of cases in which the girl is taken to the house of the boy at the time of the Gaona, but is brought back to the house of her parents after some time.

Q. Do you think that Gaona has nothing to do with consummation ?

A. No. I think it has got nothing to do with consummation.

Q. How can you say then that consummation is now earlier than it was before ?

A. I did not say that consummation was earlier, but I simply said that the control exercised by the elders was disappearing. By that I do not mean that Gaona is earlier now.

Q. You have said that puberty comes on between 12 and 15 ?

A. That is what I have heard.

Q. If puberty is between 12 and 15, and if you raise the age of consummation it would happen that there would be some cases of consummation and the law would not cover it.

A. I suggested 14 because I think in these matters we should proceed gradually and cautiously.

Q. All the medical men are agreed that if maternity comes on before 16, there will be injury to the girl as well as to the progeny, and it will not be avoided if you make the age of consummation 14.

A. You will have to take into consideration all the circumstances. After a few years you may bring in another bill for raising the age.

Q. You say that in many classes there are pre-puberty marriages. Am I right in assuming that about 80 per cent. of marriages take place when the girl is below 12 ?

A. Yes ; because the population of the lower classes is much larger.

Q. Except the Kshatriyas and the Kayasthas are all given to pre-puberty marriages ?

A. Yes.

Q. What about the Muhammadians in the U. P. ? Are there pre-puberty marriages amongst them ?

A. Yes ; amongst the lower classes, especially in the villages.

**Q.** What about the cities ?

**A.** I do not know much about the cities.

**Q.** After marriage does the girl remain at the house of the father ?

**A.** In some cases with the father, and in some cases with the husband. Sometimes girls are sent soon after marriage to their husbands.

**Q.** How then do you think that consummation does not take place before puberty ?

**A.** There are different customs, and in some cases Gaona takes place and in some cases it does not.

**Q.** What is the usual difference between the ages of the boy and the girl ?

**A.** It depends upon different circumstances. There is no hard and fast rule. Sometimes the age of the boys is smaller than that of the girls.

**Q.** Are there cases of men of advanced ages say 40 marrying young girls ?

**A.** Yes ; sometimes. But such cases are not common. Amongst Sudras there is widow-marriage and there is no such difficulty. The difficulty is only amongst Brahmins and Kshatriyas.

**Q.** Do you think that in the case of widowers consummation may take place soon after marriage ?

**A.** Yes.

**Mr. Yakub :** Would you like to have both a law of marriage and an Age of Consent Law ?

**A.** Yes.

**Q.** What would you have for the age of consent ?

**A.** 14 ; I do not want more.

**Q.** Were early marriages prevalent in your community 40 years ago ?

**A.** Even now there are cases of early marriages, but I find that there is great improvement.

**Q.** What was the custom of Gaona in those days. When did consummation usually take place in those days ?

**A.** Not before puberty ; it used to be at 13 or 14.

**Q.** What is the age now ?

**A.** Now it takes place at 15 or 16.

**Q.** Is the present generation of your community healthier than the past generation ?

**A.** It is so.

**Q.** To whom would you give the right of complaint in the case of an infringement of the marriage law ?

**A.** I would give it to the village people ; anybody may complain.

**Q.** Would you make such cases cognisable ?

**A.** I do not want police interference in these matters.

**Q.** Do you think that if there is a preliminary enquiry in such cases before the accused is summoned or before the trial is taken up there will not be malicious or false cases ?

**A.** These preliminary enquiries will cause a lot of harassment. I would not require that.

**Q.** Would you be satisfied with ordinary courts ?

**A.** Yes. But I have no objection to village panchayats being appointed to go into these cases.

**Q.** Would you like to have matrimonial courts ?

**A.** No ; what is the good of increasing the number of courts.

**Q.** Are you in favour of marriages being registered ?

A. If you can find out some way by which people of the villages may not have to suffer, I will have no objection.

Q. The register of marriages might be kept by the Patwari or any man nearby in the village, and there will be no fee. Have you any objection ?

A. You should join some one with the Patwari, say the Mukhia. Otherwise the Patwari may be corrupt and take money from the people.

Mr. Kanhaiya Lal : Would you advocate the granting of free certificates of birth to persons reporting births ?

A. Yes ; it should be helpful.

Q. Similarly free marriage certificates to persons reporting marriages ?

A. Yes ; provided you can arrange these things without giving trouble to people by having a proper agency. Otherwise persons in charge of these registers will squeeze money from the illiterate people.

Q. Supposing a registration is made compulsory and a small fee is charged, do you think it will be a hardship ?

A. Unless the amount of fee charged is nominal such as a pice for instance, I would not like compulsory registration.

Q. But people spend much money on marriages and a fee of one rupee will not matter much.

A. This will be taken to be another form of taxation.

Q. A suggestion has been made that these marital cases might be made compoundable with the sanction of the court so that good relations might be restored between the husband and the wife. What do you say ?

A. Yes ; that may be done.

Q. At present cases under 12 are cognisable, but cases above 12 are non-cognisable, and the police cannot interfere. Would you keep the cases cognisable up to 12 and non-cognisable between 12 and 14 ?

A. Yes.

Q. As regards the enquiry would you entrust it to high grade police officers to safeguard against oppression and harassment ?

A. I think it would improve matters.

Q. Another suggestion is that the magistrate should make a preliminary enquiry before issuing summons or warrant to see whether or not there is a *prima facie* case, so that all malicious cases might be eliminated. Do you agree ?

A. Yes.

Q. If these marital cases are tried in an ordinary court, the girl will have to sit in the court compound till the case is taken up and may be the subject of observation of all passersby, and the family will be scandalised. At present the cases under 12 go to a sessions court and above 12 go to a magistrate. Instead of having these two forums, and to avoid all this scandal it has been suggested that we might have a matrimonial court consisting of a magistrate assisted by two non-officials. Do you think that it will expedite the disposal of cases and inspire greater confidence in the minds of people ?

A. I think it will improve matters.

Q. Would you have the non-officials as assessors or as co-judges taking part in the assessment of the guilt and the sentence ?

A. I think it should be a Panchayat, or they should be co-judges.

**Oral evidence of Dr. DUBE, Health Officer, Lucknow.**

(Lucknow, 18th January 1929.)

Chairman : Are you Health Officer at Lucknow ?

A. Yes.

*Mrs. Beadon :* How long have you been in Lucknow ?

A. Since 1916.

Q. Have you got a knowledge of the rural conditions, or of the town of Lucknow only ?

A. I know the conditions in Lucknow.

Q. Have you got experience of any other places besides Lucknow ?

A. I can tell you about Badaun, Ajmer, Hardwar, Delhi and Mussorie.

Q. Do you find marriage conditions similar in all these places ?

A. The difference was only in Rajputana. Otherwise it is practically the same.

Q. What was the difference in Rajputana ?

A. There early marriages were more common.

Q. What is the usual age of marriage here ?

A. The average age is above 13.

Q. Is that so in all the classes ?

A. Yes ; both amongst the Muhammadans and Hindus.

Q. What is the age of marriage amongst Brahmins here ?

A. Amongst the Brahmins also the age has risen.

Q. In examining your figures we find that female deaths between the ages of 5—10, 10—20 and 20—30 are very much greater than male deaths. Why is this extraordinary difference. Is it because there are more women here ?

A. No ; there is very little difference.

Q. From your figures we find that the number of females is less than the number of males. Then why is this difference in the deaths ?

A. It is mainly due to the Purdah system. The ladies do not go out of their houses, and they do not take advantage of the open parks. Their houses are badly ventilated.

Q. Is there tuberculosis here ?

A. There is more tuberculosis amongst women than amongst men.

Q. Is Purdah very common here ?

A. There is Purdah both amongst Hindus and amongst Muhammadans. There is no Purdah amongst the lower classes.

*Chairman :* Take the case of a clerk for instance. Do you think that his women-folk observe Purdah, irrespective of the fact whether he is rich or not ? Or is money the consideration ?

A. Money is not the consideration ; purdah is the rule here except amongst the lower classes.

Q. Do you think that that entirely accounts for the extraordinary increase in the number of deaths amongst women ?

A. Early marriage is also one of the reasons.

Q. Do you come across cases of deaths in child-births ?

A. Yes ; deaths due to child-births, or as a result of complications due to child-births.

Q. Have you got a column in your statement about the deaths due to child-births ?

A. I will give you the figures separately later.

Q. How many child-welfare centres have you got in this city ?

A. I have got 7 centres.

Q. How long have these been working ?

A. The centre in Wazirganj has been working since 1920. The other centres have been working since the last two years.

*Q.* Is there any difference in the wards which have got these centres ?

*A.* Yes ; the mortality in Wazirganj is less.

*Q.* Is it due to the ante-natal work that you do ?

*A.* Yes ; wherever there are cases of maternity our midwives go to the houses and give the people advice.

*Q.* Till what age of the baby do they visit the mothers ?

*A.* We do not go for more than a month.

*Q.* Do the mothers bring their children to you ?

*A.* Yes ; once a week they bring their children to us.

*Q.* How do they come to you when there is Purgah ?

*A.* The women who come to our centres are mostly poor-class women. Of course there is no restriction, but those women only come to us who cannot have trained *Dais*.

*Q.* Have you got trained midwives in your centres ?

*A.* Yes ; trained midwives, and health visitors.

*Q.* Do they conduct labour cases ?

*A.* Yes ; if required. We do not come to clash with the indigenous *Dais*. If there is any mistake on the part of the *Dais*, we give advice, otherwise we simply supervise.

*Q.* Is the system working satisfactorily ?

*A.* Yes ; so far as we do not get any opposition from the local *Dais*.

*Q.* Are these local *Dais* trained ?

*A.* We have already trained a majority of them. We are now trying to make it compulsory on them to get themselves trained, and we want to make them obtain certificates from us.

*Q.* Do you find osteo-malacia or any special disease common here ?

*A.* Not very many cases ; but phthisis is common, especially amongst the Muhammadans.

*Mr. Kanhaiya Lal :* What is the system of birth registration here ?

*A.* We have got 16 Mohulladars under us who go their rounds in the morning in their respective areas. In the morning and evening they sit at their stations, and people are required under our byelaws to go to these stations and report personally or through agents cases of births and deaths. In the case of births, if he thinks that the head of the family has not reported, the medical man reports to us the birth, but it is not compulsory in his case. If need be we ask for particulars from the medical attendant.

*Q.* Do you fine the head of the family if he does not report ?

*A.* Yes ; he can be fined up to Rs. 50.

*Q.* Have you fined any persons like that ?

*A.* Yes.

*Q.* Then what happens in the case of births ?

*A.* Then the *Dai* who attends on the patient is required to report cases at the stations. The second agency is the conservancy staff. The sweeper in a particular locality reports cases to his Sanitary Inspector and I get information like this from the different sources. These things are compared in the office, and whoever has not reported is fined. For the first one or two omissions we give them warning, and later we fine them.

*Q.* Do you think the system is more effective than in other places ?

*A.* Yes ; I found that in Delhi there were only 2 Mohulladars, whereas here I have got 16 of them ; and there are two supervising officers over them and they submit diaries to me.

**Q.** You say that two important factors which contribute to early mortality are early maternity and Purdah. We find from your figures that the mortality of girls from 10-15 is nearly double that of boys of the same ages. There cannot be many cases of maternity here. If so, how do you account for the difference ?

**A.** Girls here are taken away from the schools at a very early age. If you have an occasion to visit the houses in this city you will find that the conditions are simply abominable. Sanitation inside the houses is very bad, and in such houses the girls are confined after their 8th or 9th year. I would therefore attribute the greater number of deaths to lack of exercise and ventilation and unhygienic surroundings ; sometimes there is lack of nourishment. Because the girls have got these handicaps their power of resistance to diseases is less than that of boys and they succumb.

**Q.** Have you got model houses here ?

**A.** Yes ; but only rich people can afford them, and a man getting 15 or 20 rupees cannot afford to live in them. Whenever I issue notices to people to vacate houses because they are unsuitable for habitation I think of the condition to which they will be reduced without having any roof to cover them. There are no good Dharmasalas and most of the people have to lie down on pavements.

**Mr. Yakub :** Why is female mortality greater amongst the mussalmans than amongst the Hindus ?

**A.** I think it is due to the Purdah system.

**Q.** Why is infant mortality greater amongst Muhammadans ?

**A.** It is due to the same thing. You will find that after 7 or 8 the Muhammadan girls are not allowed to go out amongst the Nawabs here.

**Q.** I think the infant mortality amongst the richer classes or upper classes is not greater but it must be greater amongst the lower classes ?

**A.** Here in Lucknow barring a few, everybody amongst the Muhammadans observes strict Purdah.

**Q.** But upto 7 or 8 there is no Purdah and they should not come under the category of infants ?

**A.** Yes.

**Mr. Kanhaiya Lal :** Can you tell us what is the percentage of infant mortality to births ?

**A.** I cannot say off-hand about this.

**Q.** Have you discussed this question in your Annual Reports ?

**A.** Yes.

**Written Statement, dated 15th August 1928, of Dr. LAKSHMI SAHAI SAKSENA, B.A., H.M.D., General Secretary, Oudh Sanatan Dharm Sabha, Lucknow.**

1. There is no dissatisfaction with the state of the law as to Age of Consent as contained in sections 375 and 376 of the Indian Penal Code, in so far as it deals with the minimum age-limit (Fourteen) but in so far as it places restrictions on a man's sexual intercourse with his own wife, it is defective.

2. In my opinion, the law must remain as it is, as girls in a hot country like India do attain puberty after 12 or 13 years of age.

3. There are no frequent crimes of seduction in my part of the country. The Amendment of the law made in 1925 raising the age of consent to 14 years has not materially affected cases of rape. In my opinion, raising the age-limit will bring no relief to poor girls, and so the measures to be adopted to prevent such cases ought to be (1) Social reform by means of education and social propaganda, (2) Adopting stern measures to bind down and trace wicked and immoral persons and to bring them to book.

4. The Amendment of 1925 raising the age of consent within the marital state to 14 years has not been effective in protecting married girls against cohabitation

with husbands within the prescribed age-limit. In my opinion, instead of raising the minimum age-limit of consent, marriage or gaona below that age ought to be prohibited by law.

5. In my part of the country, girls do attain puberty at the age of 12 or 13 years. It does not differ in different Indian communities.

6. Cohabitation is common in my part of the country almost among all Hindu castes after puberty and rarely before the girl completes 13 years. Such cases seldom come to court. The latter cases mostly occur among villagers and low-caste Hindus.

7. Hindu Shastras prescribe the practice of the early marriage after puberty. The authority of this is Srigrabodh and other Smritis where couplets are found saying that if parents or brothers do not consummate marriage of their daughters or sisters after puberty, they go to hell.

8. Gaona or Garbhadhan ceremony is usually performed in my part of the country, though the former is becoming a sham with the spread of education. Sometimes it is anterior to the consummation of marriage and sometimes it coincides with it. Much depends on the custom of the community. It is generally performed after the attainment of puberty. How soon it takes place after puberty cannot definitely be stated.

9. In my opinion, attainment of puberty is not always a sufficient indication of physical maturity to justify consummation of marriage. Nothing definite can be said as much depends upon the family and climatic conditions.

10. In my opinion, a girl will be competent to give an intelligent consent to cohabitation with a due realization of consequences at 14 years of age.

11. I have never come across any case where cohabitation before puberty or after puberty, but before full physical development of a girl has resulted in injury to her health or body or prejudicially affected her progeny. Much depends always upon the economic prosperity of the people and the general tone of morality prevailing thereabout.

12. Early marriage after puberty is not naturally responsible for infantile mortality or physical and intellectual deterioration of the people. But the present day education, divorced from knowledge of Code of Morality regarding sex is responsible for cohabitation at periods not enjoined by nature, Shastras, or Medical Science. Also poverty plays an important part in the matter of infant mortality. Also School environment, indiscrimination in dietary, foreign films screened in Cinemas, go a long way to excite sexual feelings in boys, even before marriage, and thus they lead them to vicious habits which are responsible for their physical, moral and spiritual decay.

13. In my part of the country there has been no general development of public opinion in favour of an extension of the age of consent in marital and extra-marital cases since the Amendment of the law in 1925.

14. In my opinion majority of women (who are illiterate) do favour early consummation of marriage for their children and the literate minority of women, oppose it.

15. Difficulties have been experienced and will be experienced in connection with offences under Sections 375 and 376 of the Indian Penal Code. The only measure which can tide over the difficulty is to demand the birth-certificate of the girl from the Municipality or District Board where the birth of the girl was recorded. Horoscopes may be changed and medical men may be influenced.

16. The difficulty or margin of error in determining the age cannot be materially reduced or minimised to whatever age the limit is raised.

17. Extra-marital and marital offences must be separated. In the former case, the punishment must be severe but in the latter case punishment must be light and should not be imprisonment, but heavy fine.

18. In my opinion, there ought to be a difference in the procedure of trials for offences within and without the marital state, as the former ought to be bailable and

tried in a Magistrate's Court, while the latter ought to be Non-bailable, and should be tried in a Session Judge's Court.

19. An eye must be kept on police officials, who mostly being devotees of Goddess of wealth to the breaking-point, let off real criminals when they are bought off by offenders and implicate innocent persons to extort money from them. Also the whole system of evidence existing in British Law Courts of Justice, even under affidavit is generally well-tutored and hence the real facts rarely come to the Court's notice. The legal profession connives at it and police bungles at it for its own private ends. Hence the present system of law courts ought to be improved and modified and not wholly to go by evidence.

20. In my part of the country, legislation fixing the minimum age of marriage would be more in consonance with public opinion.

21. I do not rely much on strengthening of the Penal Law to secure the object in view as no degree of Legislation can succeed in preventing crimes unless the public has an educated mind and so social reform and propaganda can attain success much more rapidly than Legislation.

**Oral evidence of Dr. LAKSHMI SAHAI SAKSENA, B.A., H.M.D.,  
General Secretary, Oudh Sanatan Dharm Sabha, Lucknow.**

*Lucknow, 19th January 1929.*

*Chairman :* How long have you been the General Secretary of the Oudh Sanatan Dharm Sabha ?

A. For the last two years I have been the General Secretary of the said Institution.

Q. What is the number of members of the Oudh Sanatan Dharm Sabha ?

A. About 150.

Q. Does it consist of orthodox as well as advanced men ?

A. Yes.

Q. Does it consist of more orthodox men or more advanced men ?

A. It consists more of advanced men.

Q. Have you got any institution here representing orthodoxy more strongly than your Institution ?

A. This Oudh Sanatan Dharm Sabha, Lucknow, was formerly called the Oudh Sanatan Dharm Sabha, but the young men of the present day have started another Sabha giving the same name as that of ours, but it has no force now in the City though the name persists. Some of the members of that Sabha have come to our Sabha.

Q. Is it a fact that in most cases soon after puberty consummation takes place ?

A. It is generally the case. I think that amongst the low castes who don't live in towns, of course this might happen but not generally in towns because the ideas have developed and generally marriages now take place much later.

Q. Don't you think that even amongst the orthodox people here early marriages do not take place ?

A. Even amongst them there are no early marriages.

Q. What is the usual age of marriage in towns ?

A. 14, 15, 16 and 17.

Q. So in many cases do you think that marriages take place after puberty also ?

A. Yes.

Q. What about the Brahmins and Vaishyas ?

A. Even amongst the Brahmins here the age of marriage is prolonged. Of course there are certain people here where the old ideas prevail and yet they are disappearing very soon.



Q. Is there any class here who practice early marriage as a rule under fear of social ostracism ?

A. No. It might be very rare.

Q. So I think that is your reason for saying that before 13 consummations are not very common in this part of the country. Is it not ?

A. Yes, because marriages themselves take place soon after puberty and there is no chance of the girl being consummated before 13.

Q. You say that legislation fixing the minimum age of marriage would be more in consonance with public opinion. Is it correct ? Perhaps it may be more effective but would it also be more in consonance with public opinion ?

A. In this part of the country there is no such force in social agitation as it exists in some other parts of the country. Therefore our people are very quiet over this matter.

Q. Do you think that the law of marriage would be more in consonance with the views of the people ?

A. Yes.

Q. What the minimum age of marriage you propose ?

A. For higher classes 16 or 17 will do and for lower classes 14 will do.

Q. But do you expect legislation to say that for the higher classes we will have this age and for the lower classes we will have that age ?

A. Of course we cannot expect that. That is a fact. My idea is that if the lower class girls are married late, they are likely to fall a prey to temptation in places where they work as servants, etc. That is why I say that a legislation for the lower classes will be injurious for girls who move in higher families as servants, etc., but we might fix any age considering both these things. I say now there is no law prohibiting marriages below 14 or even 15 but I can quote you instances where marriages have taken place at 22 in higher families.

Q. Do you mean the Kayasthas thereby ?

A. Yes.

Q. Leave aside the Kayasthas. We have been told that they are all of an advanced stage. Do you know any other community besides the Kayasthas where post-puberty marriage exists as a rule ?

A. Education is spreading into every higher caste and of course that has its effect upon other castes and so there is a tendency to raise the age. Amongst the advanced Brahmins there is post-puberty marriage.

Q. But don't you know that the advanced Brahmins are not even 2 per cent of the whole of the Brahmins. Are they not few ?

A. In towns everybody is affected by educated people.

Q. How does it affect the practice ?

A. The practice is also affected.

Q. So, so far as these parts are concerned, apparently you are of opinion that there is not much risk in making a rule of that kind ?

A. There will be no risk in enacting a law like that.

Mrs. Beadon : You have said in your answers to Questions Nos. 11 and 12 that you have never come across any case where cohabitation before puberty or after puberty but before full physical development of a girl, has resulted in injury to her health or body or prejudicially affected her progeny. If this is your opinion why is it necessary to make a law fixing an age for marriage and why don't you allow them to have their own customs ? Don't you think that such cases are common ?

A. They are not common.

Q. Are not such cases common even after puberty ?

A. There may be.

Q. In that case is there any particular deterioration in the mothers' and childrens' health? Why should you fix an age for marriage if there is no deterioration?

A. In my humble opinion there is no necessity for this legislation. As education advances all these things will adjust themselves. Suppose you fix a legislation for villages, the villagers will be harassed by the police. The villagers are also illiterate and not educated and they will be put to all sorts of trouble.

Chairman : For what will they be harassed?

A. Suppose in a village gaona takes place, the low paid officials will come and begin to interfere. Now at present the villagers don't pay anything to them under the present law. Your introducing a new law, will put to them to many difficulties. In the villages the condition is quite different from that of the city.

Q. I do not quite follow you. Supposing a law prohibiting marriages below a certain age is passed, and if a girl is married below that age, somebody will come on the scene and will say that your girl is under the prescribed age and there would be harassment. Is that what you mean?

A. Yes.

Q. Is there harassment by police or anybody under the Age of Consent Law?

A. No.

Q. Why are you apprehensive of any harassment if the age is raised by one or two years?

A. If you don't entrust the matter to the police, in that case I have no objection to the age being fixed.

Mrs. Beadon : Is it really necessary to fix an age for marriage since you say there are no evils?

A. I say I am not in favour of any legislation. The tendency of public opinion is rising and there is no necessity for it.

Mrs. Nehru : Supposing the police hand is eliminated, what are your objections to legislation?

A. In that case there is no objection on my part.

Q. Have you come across any cases under the present law?

A. No.

Q. Have you heard of them at least?

A. No.

Q. Even in villages don't you think that there is consummation before 13?

A. No, there is no consummation taking place before 13 even in villages.

Q. You have said in your answer to Q. 3 that we should adopt stern measures to bind down and trace wicked and immoral persons and bring them to book. Can you give us any details of your suggestion?

A. A greater watch is necessary over such persons.

Q. By whom?

A. By the police and by the authorities as well.

Q. But what changes would you like to have?

A. At present as I have written in one of my answers the system of evidence is so defective that a false person can concoct evidence and prove in the court that he is quite guiltless and those persons who are innocent can be proved guilty under the present manner of our evidence.

Q. We know the defects of the present system. We only want an advice from you for adopting measures to remove these defects.

A. Supposing in a certain moholla a case has occurred, the best thing in my opinion would be to institute an enquiry. Therefore some spy can get the true information about the case.

**Q.** How can you be sure that the spy would bring true information about it ?

**A.** True information can be got in the mohallas but when the thing comes to the court, there the information changes.

**Q.** Would you penalize gaona or marriage ?

**A.** Marriage. I say that the marriage may be fixed at 14 but gaona shouldn't take place before 16.

**Q.** Suppose if you penalize gaona, and if consummation takes place before the ceremonials of gaona, how would you prevent the consummation ?

**A.** Then I shall have to change my opinion.

**Q.** In that case would you rather have the age of consent raised to 16 instead of penalizing gaona ?

**A.** Yes.

**Q.** What do you mean by saying that the gaona has become a sham with the spread of education ?

**A.** It means that the actual consummation of marriage takes place before gaona.

**Q.** Even then is this ceremony celebrated ?

**A.** Yes.

**Q.** Are you of opinion that in extra-marital cases girls at 14 are ripe to give a consent ?

**A.** It may be 16 years.

**Q.** What is your objection to 18 ?

**A.** I have no objection to 18.

**Q.** Do you think that the registration of births is working satisfactorily ?

**A.** Yes.

**Q.** Is there a name column given in the register ?

**A.** Yes.

**Mr. Shah Navaz :** Do you think that early marriage at 13 or 14 is an evil ?

**A.** Of course it is an evil.

**Q.** Do you think that consummation say at 13 or 14 is an evil ?

**A.** At the present day it is an evil. I have seen parents who have married very early and who consummated very early are living upto 80 now. But at present when the starvation is full, consummation at 13 or 14 is an evil at the present day.

**Q.** Do you think that both these evils are sufficiently widespread that we should resort to legislation ?

**A.** No.

**Q.** Do you believe that consummation takes place soon after puberty ?

**A.** No.

**Q.** How long after puberty generally does consummation take place ?

**A.** Two or three years after puberty it takes place.

**Q.** You have fixed 14 for marriage and 16 for consummation. How would you prevent consummation between 14 and 16 ?

**A.** It is rather difficult to bring such cases to light. I say that this legislation will be a kind of warning to them that these things must be stopped. This legislation at any cost will have only an educative value and nothing more.

**Q.** Would you like that the mere going up of the wife to the husband's house may be considered as an offence ?

**A.** No.

**Mr. Bhargava :** Do you think that consummation by itself not followed by maternity is an evil if the girl is less than 14 years ?

A. Yes. Of course it will affect the health of the girl and the nervous system may break down.

Q. So may I take it that consummation before 16 will be injurious to a girl ?

A. Yes. But I may say one thing. I say when the country has got enough food and become economically rich too, then my ideas will change, because then the injuries will be less because they will be stronger in body.

Q. Similarly do you think that this early consummation leads also to infant mortality ?

A. Yes. In the present day economic condition of the country the health will suffer.

Q. Supposing the economic conditions are quite good even then don't you think that early consummation and early maternity would be productive of great evil ?

A. Yes.

Q. And much more so because the economic conditions are bad. Is it not so ?

A. Yes.

Q. Therefore would you say that early consummation or early marriage leads to infant mortality much more than it will lead to otherwise ?

A. Yes.

Q. Will you kindly see your answer to Q. No. 12 ?

A. That answer is quite general. I say that much depends upon the physical constitution and the food.

Q. Now do you think that as compared with the older generation the coming generation of young men is getting weaker and weaker ?

A. Surely it is so.

Q. Is not early consummation or early marriage one of the causes of deterioration of the present generation ?

A. Yes. It can be one of the causes.

Q. Is it one of the potent causes or not ?

A. In the present day it is one of the potent causes.

Q. Is the gaona in the upper classes falling out of use ?

A. Yes.

Q. And especially when the husband and wife are over 16 years of age and parents insist that wife should be sent soon ?

A. They may not even insist.

Q. At the same time gaona is felt as an economic evil when a person has to pay so much at the time of gaona ?

A. There the question is quite different and I think you will have to consider the whole situation in the Hindu family.

Q. Have you got some experience of rural classes—whether gaona is falling out of vogue among them ?

A. I have not much experience.

Q. Do you think if this law of marriage is fixed there will be any sort of agitation among the educated classes ?

A. No.

Q. Among the uneducated classes ?

A. There may be in some very orthodox people but it will fall out. It will have no effect.

Q. Will Sanatan Dharmis accept it all right ?

A. After sometime they will.

**Pandit Kanhaiya Lal :** Would you advocate a system of registration of marriages that is reports being made of all marriages giving the names of the marrying parties and their ages so that we may know whether the law has been contravened or is likely to be contravened ?

A. I would prefer it very much but under the present system too much interference in the family affairs of people, I think, would not be very curative of all evils.

Q. Nobody claims it will be curative of all evils ; but in order to make the law effective there must be some way of finding out whether the law of marriage is being infringed.

A. If it may not involve a new tax, I would agree to have it.

Q. Can you tell us who should be the authority to whom report should be made of these marriages ?

A. District magistrate or municipal boards in municipal areas and district boards in rural areas.

Q. You would employ the same agency that is now employed for the registration of births and deaths ?

A. Yes.

Q. Would you advocate that in the case of marriages a free marriage certificate should be granted to the marrying parties so that they may preserve it with them ?

A. Yes, but for the poor people it will be rather difficult to preserve.

Q. But suppose anybody says you have married your girl before the prescribed age you can show the marriage certificate and that will be protective and helpful ?

A. Yes.

Q. Would you advocate similarly the grant of a free birth certificate if it is possible ?

A. If it is avoided it would be better.

Q. What is to be avoided ? You have said that the marriage registration will be very useful.

A. Yes.

Q. In the case of births also would you like the grant of free birth certificates so that they may be preserved as evidence of age.

A. There is no harm.

Q. You have advocated that marital cases should be made non-cognisable. In that case what measures would you suggest for detection ? Consummation takes place privately and nobody can know what is happening.

A. My idea is that this law will have an educative and deterrent effect and if any more interference is put in I think it will not be very good for the society.

Q. Would an association like your association take upon itself the task of doing educative and detective work and report to the proper authority where consummation has taken place or marriage has taken place before the prescribed age ?

A. We are prepared to take up the educative part of it but not the detective part and that requires expenses.

**Oral evidence of the Hon'ble Mr. Justice SYED WAZIR HASAN, Acting Chief Judge of the Oudh Chief Court.**

*(Lucknow, 19th January 1929.)*

*Chairman :* Are you the acting Chief Judge of the Oudh Chief Court ?

A. Yes.

Q. Were you also Secretary of the Muslim League ?

A. I was Secretary of the All-India Muslim League for 7 years.

Q. Is there a large Shia community here ?

A. I would not say exactly on the ground of population but it is more influential than at other places, the simple reason being that the former Government was a Shia Government.

Q. Is there any difference of views in a matter like this relating to consent or marriage among the Shias and Sunnis ?

A. Not to my knowledge.

Q. Do you think that there are any Quranic injunctions which will militate against the enactment of the age of consent law or fixing the minimum age of marriage ?

A. There are no injunctions of an imperative character which will come into conflict with any legislation that may be made. To my mind they are all suggestions and not imperative.

Q. Is the present statutory age of 13 relating to consent regarded by any section of the Mohamedans as an infringement of any Islamic injunction ?

A. No.

Q. What is the practice actually as regards marriages among the Mohamedans here ?

A. I think even marriage, apart from consummation, is never performed among the high class Musalmans before the age of puberty or even majority as I understand in the Anglo-Indian law. I am not aware of any case myself where a girl might have been married below 17 or 18.

Q. Usually the age of marriage among the higher classes is between 17 and 18 ?

A. Yes.

Q. We have been told by some witnesses that among the higher and better classes the craze for getting married early extends even among the Mohamedans. Is that correct ?

A. I think those are exceptional cases generally founded on considerations quite foreign to marriage considerations.

Q. In bigger families are those considerations likely to occur more ?

A. There are very few examples.

Q. Among the lower classes of Mohamedans do you think there are marriages before puberty ?

A. In the lowest strata perhaps.

Q. What is the usual age of marriage among them ?

A. 14 or 15.

Q. Even that is after puberty ?

A. It is always regarded to be so but actually whether it is so or not, I cannot say. Puberty is personal development.

Q. But do the signs of puberty occur among the Mohamedan girls before 14 ?

A. They may or may not occur but generally they do not. According to Mohamedan Law age of puberty may be reached even at the age of 9 but it all depends on whether the signs of puberty have appeared.

Q. Is it not generally recognised by the Mohamedans of the lower classes that somewhere about the time of puberty marriage should take place ?

A. Absolutely, I have no doubt.

Q. Have you reason to suppose that there is a breach of the present law at 13 ?

A. Not among the Mohamedans.

Q. Not even among the lower classes ?

A. I should not think so, and if there are they must be treated as exceptions.

Q. Do you think that occurs in any section of the Hindus where early marriage prevails ; have you ever heard of such cases ?

A. No.

Q. Are you in favour of legislation in matters like these ?

A. Broadly speaking no.

Q. But for the present situation and condition of things ?

A. It is one of the most desirable things that should be done in India. It is the foremost reform that the country requires above all political and social reforms.

Q. Do you attach very great importance to it ?

A. I attach very very great and serious importance to this matter but I am very diffident in advising legislation for the purpose.

Q. What other efficacious remedy would you suggest ?

A. I may use a very common word social evolution but we can hasten the speed by introducing compulsory education all over the country both amongst boys and girls. I am convinced in my experience that people who are educated even to the standard of compulsory education have better notions about these matters of marriage responsibilities than uneducated people altogether.

Q. But I think even in India you will realise there is a very large section of even educated people who still have this custom of child marriage ?

A. Yes they have but I am also convinced that with a type of better civilization and better views those ideas will wear away in course of time. Education will have this effect.

Q. By the time we have compulsory and free education as a sovereign remedy for all our evils do you not think that legislation will help towards social evolution ?

A. In educating people and social uplifting if there is a law it is, a law.

Q. There is a tendency towards raising the age for marriage—do you not think the law will hasten that tendency ?

A. If it is a law it is to be obeyed, and those who do not obey are guilty. When I said I am very diffident in advising legislation it is because I have in my mind whether the people would welcome such a legislation. We are to consider our traditions, prejudices and the narrow outlook.

Q. Considering the importance that you attach to this custom as an evil do you think Government will be justified in enacting a law for the age of consent or for marriage although it may not be acceptable to some people ?

A. I have told you I would not advise Government to undertake such legislation.

*Mr. Kanhaiya Lal :* Sometimes persons have to be protected against themselves ?

A. If you must protect people then you should not be afraid of repercussions and then I will go the whole length of it. I think it is temporising with the matter by fixing it at 14, 15 or 16.

*Chairman :* Where would you have it if at all ?

A. If you must legislate have it at 22 for the boys and 18 for the girls.

Q. Why do you fix it at 18 for girls ?

A. That gives you the object of legislation.

Q. Do you fix that for physiological reasons ?

A. Yes.

Q. You will put it at an age where physiologically a girl may be left to safe motherhood ?

A. Exactly. To enable a girl to undertake the life of a married woman and similarly a boy to undertake the life of a husband. The underlying idea for all legislation or of social evolution, I take it, is the development of the people physiologically, mentally and physically. That being the goal I am not in favour of anything less than that.

**Q.** Have you any idea as to what proportion of the population here in the U. P. goes in for early marriage and what for marriage at higher ages ?

**A.** When I have to include the lower strata of society I would put it at 60 per cent who go in for marriages at lower ages.

**Q.** And among whom the evil that you suggest exists ?

**A.** Yes. Taking the lowest and highest ranks of society when you come to figures I should put it at 60 per cent.

**Q.** And are the other 40 per cent of more advanced views ?

**A.** Yes.

**Q.** You think the evil is so widespread as to include 40 per cent of the population and you say 40 per cent is taken up with this idea and the actual practice is in the right direction. In those circumstances would you not allow legislation to be passed ? 40 per cent are already converted, the evil is very large, it affects 60 per cent of your population and you attach very great importance to it ?

**A.** If it is resented by the 60 per cent the 40 per cent will fall in line with the 60 per cent. In practice they may be different but the 60 per cent would not like their domestic laws to be disturbed by legislation.

**Q.** Are you thinking of dissatisfaction amongst any particular class or amongst the Mohamedans who feel more keenly than others ?

**A.** I am thinking of all together.

**Mr. Kanhaiya Lal :** The higher the age the greater will be the dissatisfaction ?

**A.** I would draw that logical corollary from that very interference. That is exactly what I meant to say. If you must legislate go the whole length of it. I do not think the dissatisfaction or resentment will be proportionate to the age limit which you fix.

**Chairman :** It has been suggested by witnesses in Madras that the age limit for marriage should be 12 and the consent age should be 16 and you know Madras is said to be a very backward and obdurate Province.

**A.** If your interference is so informal as to cause no ruffle on the surface of social reform then it does not matter.

**Q.** But there are people who marry at 3, 4, 5 to 12 years ?

**A.** I do not think human aid can help those people whose mentality is so low.

**Q.** But 12 is considered as an advance and they do not mind it if the consent law is at 15 or 16. There is a positive suggestion that if the age for marriage is reduced you will cause discontent among a very much smaller section and much less influential section than otherwise.

**A.** If you take that view into consideration when legislating then I say you take a case of abnormal conditions and not of normal condition of the human mind. Legislation, I venture to suggest, should be based on general conditions of things and not on exceptions. If you find that a group of people in a part of Madras or even in the whole of Madras having views tending in that direction, all I can say is that it is not a sufficient index of the whole of the country. I just bestowed a serious thought to what R. B. Pandit Kanhaiya Lal said that if the age be not very advanced there may be less fear of resentment but unfortunately I cannot agree to that. I think the disturbance will come and people will not pause to think whether the resentment is justified or not. What will catch them is the interference and not up to what limit it is. If you bring a mind to bear on a question like this logically after all it is very little interference. It does not practically affect our social customs. Then if we assume that such a mentality exists I will go the whole length of legislation. People when they come into a mood of resentment on anything they do not pause to consider as to the locality or desirability of interference.

**Q.** But apparently there have been such thoughts previously so far as law of conversion is concerned where a man does not now lose his inheritance. That is common to Hindu Law and Mohamedan Law. Previously if a man was converted



to Christianity he had to lose his inheritance but inheritance is not now lost under the statute. The law relating to widow remarriage again is considered to be against social customs.

A. Has it given any impetus to widow remarriage ?

Q. It has given. What I mean is that legislation has the effect of removing the bar of disinheritance or making widow's children legitimate. That legislation has been endured by Hindus although there was great cause for dissatisfaction.

A. I am not prepared to accept that analogy for resentment. I think the two things stand on a different footing.

Q. What is your idea about a law for prohibition ?

A. I am not in favour of it.

Q. Apparently your only test is that if it is likely to be accepted by people then you would suggest legislation and not otherwise ?

A. If I accept your question I would like to understand what the majority means ?

Q. For instance 70 per cent were on one side and 30 per cent on the other side.

A. I would not say that. I say that the majority will fall in with the discontented class. So the mere fact that there may be numerical majority is no guarantee for the legislation being popular or welcomed.

Q. Do you think the amount of dissatisfaction among the Mohamedans is likely to be more than among the Hindus ?

A. No.

Q. Is it so because their custom is already ahead of the law ?

A. Yes. For generations and generations their practice is on those lines. Indeed as regards the Mohamedans I think if you could exclude them from the legislation it will do more good.

Q. 60 per cent of Mohamedans in Bengal have early marriages at 8 or 10, and in Calicut among the Moplas it is very common, and in Sindh too among certain classes of Mohamedans it is very common. Among the Julahas in Bengal there is early marriage at 12 ?

A. I learn these facts from the Committee with gratitude.

*Mrs. Beadon* : We have been told that there are a lot of ladies who on account of social ostracism are afraid to marry their girls late and they have openly said to us if only this law were passed we would be greatly helped. Witnesses have come from all parts of the country to tell us this.

A. I am very glad to hear that that view is held by a large section of the people.

Q. Have you seen any cases in which there has been injury resulting from early consummation or early maternity ?

A. No.

*Mrs. Nehru* : What are your reasons for saying that Mohamedans should be excluded from such a law if it is passed ?

A. That statement was mostly founded on my knowledge of the conditions in the U. P. and so I do not think that legislation is required for all respectable Mohamedans.

Q. Even if the practice is of late marriages it does not do any harm. Taking it for granted that the law is not necessary for Mohamedans would it do them any harm ?

A. If you must legislate in the general interests of the country it is a very courageous step on the part of the Government and particularly on the part of a foreign Government and if it takes that courage I would be very much pleased.

Q. What are your reasons to think that there will be a great deal of resentment in the country if this law is passed ?

A. Because of my knowledge of the people.

*Q.* Are you talking of the U. P. ?

*A.* I am talking of the whole country.

*Q.* Will there be much resentment in the U. P. ?

*A.* Not more compared to other provinces but there will be resentment in the whole country.

*Q.* Have people so far given any expression to their resentment ? Have there been any meetings or expressions of opinions against it ?

*A.* Not to my knowledge.

*Q.* Don't you think this resentment, even if it is caused, will be very short-lived and will not be very strong either ?

*A.* I cannot vouch for that.

*Q.* Taking the feelings of the educated people into account even if such a law is not passed don't you think there will be some discontent among them ? Even so far there have been allegations that the British Government does not want social reform for Indians, and that that is why they do not support it.

*A.* As a mere matter of opinion I differ with those gentlemen who take that view.

*Q.* What do you personally think whether this reform is necessary ? The only reason you adduce is that you think that there will be resentment in the country ; but if there is resentment on both sides which step would you advise the Government to take ?

*A.* As I said it is a matter of opinion. I do not think if the Government does not legislate on those lines there will be resentment.

*Q.* Will there not be resentment worthy of being taken into account by any Government ?

*A.* It assumes a political phase. The Government is blamed for not doing any particular thing, but it is very pregnant with results if a Government is found to be active doing something which the people do not want it to do.

*Q.* Are you quite sure of the fact that majority of the people do not want Government to make this legislation ? §

*A.* That is my belief. §

*Mr. Mitra :* Most of the Mohamedan gentlemen who gave evidence before this Committee were against legislation on religious grounds namely that Mohamedan scriptures are for liberty of action and there is nothing restraining the age for marriage. Do you agree with that ?

*A.* With due respect to that it is a subterfuge, the reason of resentment or disagreement is otherwise. To my mind there is nothing in the religion itself or in the letter of religion.

*Q.* What do you consider is really the reason for their going against any marriage law, is it merely for interference in their domestic affairs ?

*A.* Yes and by a foreign Government.

*Q.* As a matter of fact so far as these provinces are concerned this law will not interfere because generally marriages take place late in life. Is it not ?

*A.* As I said that factor does not count with me because the very interference will be taken up by those who are in favour of it as well by those who are opposed to it.

*Q.* Are you ready to reconsider your opinion on this if I tell you that in Bengal 80 per cent of marriages take place before the girls attain puberty and even consummated ?

*A.* Even then I am not prepared to fix an age by legislation.

*Q.* Are you against a law for compulsory education ?

*A.* I am in favour of it.

Q. But on principle are you not against legislative interference? Why particularly do you feel that this is an evil?

A. I see a world of difference between the marriage and education law.

Q. You want primary education to remove ignorance and here it is an admitted evil arising from early marriage. Will you kindly say why you agree in one case and disagree in the other?

A. For many reasons—compulsory education will not be resented.

Q. You are against this legislation only because there will be resentment. Apart from the resentment that you expect is there any other reason?

A. But you see it will analyse into many reasons if you go into the causes of resentment. Some people may take it as an invasion on their religion, some may take it as an invasion on their domestic happiness, others may take it as a thing resulting in persecution by our preventive and detective agency. There may be thousands of reasons for the resentment.

Q. If we understand these we can remove them and yet have the legislation because the evil effect of early marriage is very great.

A. How will you remove the effects without feeling that you are doing wrong to the community affected. You may argue that that feeling is not well founded. That is a different question but I say the feeling is there, some may look upon it as an invasion on their domestic life, some may look upon it as an invasion on their religion. People do not pause to consider why they should have resentment and why they should not have resentment. If you could have a country like this which resents things which ought to be resented it would be a millennium.

*Mr. Shah Nawaz* : You know that the present age of consent within marital relations is 13 for girls and we find that very many married girls in Bengal are consummated by their husbands between the ages of 12 and 13 independently of the question whether they have arrived at the age of puberty or not. What practical methods would you suggest to enforce the present law? One method is to fix a minimum age for marriage at 13 or 14. The present law has been a dead letter; thousands and thousands of cases there are where the girls are consummated before the age of puberty.

A. I think the law is bound to remain a dead letter and any further legislation will remain a dead letter unless repression comes in to aid it.

Q. Suppose we fix the minimum age of marriage at 14 or 15 would it be a dead letter?

A. Just as it is now.

Q. But there is no minimum age of marriage and one method is to fix a minimum age of marriage at 13 or 14 in order to prevent the evil.

A. Is not the age necessary for such a law so that there may be means of ascertaining the age without doubt?

Q. Our belief is that our very first step should be to make the registration of births and deaths more reliable and accurate and as far as possible the names of the girls and boys should be given and that marriages should also be registered so that we may find every means to prove as far as possible the age of the girl. Supposing we succeed in doing that what practical methods would you suggest to enforce the law in the Penal Code?

A. Then you assume that I must support the present law.

Q. Are you against the present law?

A. For the very reason that I am against any further encroachment I am against this lesser encroachment. I think if things had been left as they were we would not have been in a worse position and I am glad that we have not been in a better position either. The law has done no good at all.

*Q.* Therefore the question of substituting for it something better arises. Do you think compulsory education for the girls will be acceptable to the Muslimans ?

*A.* Yes.

*Q.* Would you like to have separate schools for the girls ?

*A.* Yes.

*Q.* What is your opinion about extra-marital cases—what should be the age for girls ?

*A.* 18 for girls.

*Chairman :* Would you like to have the trial of extra-marital cases in camera ?

*A.* I have no objection.

*Mr. Bhargava :* As regards the proposal regarding compulsory education may I ask you if it is a feasible proposition within the next 20 years ?

*A.* It is a feasible proposition in a day.

*Q.* Do you think the finances will allow it ?

*A.* I know nothing about the financial side.

*Q.* May I know why it has not been brought into force up to this time ?

*A.* I would not like to state those reasons.

*Q.* Supposing during the next 20 years this compulsory education of girls is not regarded as a practical proposition from the point of view of finances, would you have the evil as it is now for 20 years ?

*A.* Yes.

*Q.* So your first instalment of advance towards social reform also would be by way of compulsory education ?

*A.* That was only a suggestion.

*Q.* You said this is one of the many things but it is the evolution of knowledge which should bring about these reforms.

*A.* I said the first step towards such evolution may be compulsory education but I would like to overcome all the difficulties which may be in the way of this education. For all those leaders of our social section or political section in the country if the whole of their enthusiasm and energy were deviated to this one cause it shall have been well devoted.

*Q.* Barring this one remedy of compulsory education do you want we should have social propaganda ?

*A.* Yes.

*Q.* May I know whether in the U. P. social propaganda has been going on and if so for how many years ?

*A.* I am not aware of any active social propaganda in the U. P.

*Q.* Do you expect in the near future any social propaganda ?

*A.* People should be educated.

*Q.* So that before education comes in there will be no social propaganda ?

*A.* I am not afraid of delay occurring in the reform. By trying to expedite things you may bring about chaos.

*Q.* May I know if you can fix any definite time say 50 years or more before which this social evolution will be brought about ?

*A.* I cannot.

*Q.* Then it is absolutely indefinite and vague, it may be 200 years ?

*A.* It is not vague or indefinite. What is indefinite is the time but the work is not indefinite.

*Q.* I wanted to know about time ?

*A.* Nobody could say about time.

**Q.** If you could be convinced that so far as compulsory education is concerned the majority of the people would be opposed to it will you not even legislate for compulsory education ?

**A.** I would not accept your compromise. I should be excused from answering a very hypothetical case.

**Q.** You have been pleased to give several reasons on which opposition may be based. One of them was disquietness on account of interference in domestic circles. If the present law is rigidly enforced do you think the amount of disquietness on account of interference into domestic circles by the present law will be greater or less than that which would happen if there were a marriage law for girls at the age of 14 ?

**A.** I cannot compare the volume of resentment. If you find this law has not been rigidly enforced so far, then I would say if you enforce it there would be resentment.

**Q.** Will the resentment be greater if there is interference in married life than if there is interference with the right of marrying girls beneath a prescribed age ?

**A.** It is very difficult to apportion the resentment I think resentment there will be in both cases.

**Q.** Then should I understand from you that so far as the offences in connection with immature girls are concerned you want there should be no provision on the statute book ?

**A.** I do not want it to be expunged.

**Q.** Then it follows that you want to enforce it because you do not want the law to remain a dead letter ?

**A.** Yes.

**Q.** Therefore you are in favour of rigid enforcement of the present provision ?

**A.** Then it would follow if the present state of things is allowed to continue there will be numberless cases in courts.

**Q.** The resentment has not come on the surface because you have not rigidly enforced the law, is it so ?

**A.** I say if you enact a law you must enforce it.

**Q.** You are yourself in favour of the retention of that law ?

**A.** Retention is one thing and justifying it is quite another. Leave the law as it stands, do not interfere because my reason would be exactly the same. I say with confidence that if you try to enforce it with rigidity you will have created a volume of resentment.

**Q.** Suppose this Government were not a foreign Government would you then advise Government to look to the well-being of the girls and boys ?

**A.** That is a very big and huge supposition and I would take a long time to consider it.

**Q.** In fact the Government of India say that they look at this question from the national point of view. Supposing it were so would you agree with me that the Government should not adopt this attitude of indifference towards the evil which according to you is so great ?

**A.** I should not make an assumption one way or the other. I am not in touch with politics at present. If you assume that this is a nationalist government and not a foreign government you are welcome to make that assumption and I do not want to contradict you or support you.

**Q.** When you say this legislation should not be undertaken on account of the possible resentment which may be caused, are you considering the justification from the point of view of the present government or are you considering it from the standpoint of the people in general ?

**A.** From the standpoint of the people in general in relation to the Government.

**Q.** So that you think it is not discreet for this Government to legislate in this matter ?

**A.** I said I am opposed to this and particularly by a foreign government.

**Q.** As regards the experience of other countries in matters like this, you know the present opinion is that the Government should interfere in social matters.

**A.** Which government you mean ?

**Q.** All the Governments in the world ?

**A.** I should like to compare those governments with the government, rather the governance in India, before answering this question.

**Q.** Then may I understand it is this special form of Government which stands in your way ?

**A.** I never said that.

**Q.** May I know then what exactly is in your mind and why you don't like the interference of Government ?

**A.** I said because it is a foreign government.

**Q.** So that in its own interests it should not do that.

**A.** I would not take that answer as mine. I said people will resent it and such legislation should not be undertaken particularly by a foreign government.

**Q.** If the evils were so great as you yourself make them out to be, what objection, I want to know, can you have against a national government undertaking this legislation ?

**A.** I am not prepared to answer that question to-day.

**Q.** As regards extra-marital offences you have said that the age should be raised to 18 ?

**A.** If there must be legislation, it may be. I said I would not place that at anything below that, if there must be any further legislation in this behalf.

**Q.** There are two questions, whether you are in favour of legislation at all in this respect, and if so what should be the age. You have given an answer to the second question. I want to know whether you would like such a legislation ?

**A.** In the interest of public morality I would say, yes, but with diffidence even there.

**Q.** May I know why you are diffident in this matter ?

**A.** Because here again I fear that it may not be welcomed by the people at large and it would vary generally with the physical development of the people concerned. My own view is that it should be 18 and 22 which may not be a standard and suit all communities.

**Q.** From what community do you fear that there will be some sort of agitation against this increase in age ?

**A.** I could not cite an instance of any particular community but I imagine that there must be difference in the physical developments of various communities.

**Q.** Do you think in India a girl is able to give her consent considering the full implications thereof at an age less than 18 ?

**A.** You mean taking the mental factor also into account ?

**Q.** Yes.

**A.** Yes, she is.

**Q.** What would you place the age at ?

**A.** Say, 16.

**Mr. Yakub :** Do you, as a Musalman, think that fixing the age of marriage would be an interference in the religion of Mohammadans ?

**A.** No. This is my view but I don't know how the people will take it.

**Q.** Do you think there will be a very large number of people who would resent this law on the ground of social interference ?

A. I would say, also on social grounds.

Q. You have already said that it does not involve any question of religion.

A. That is my view of the thing. I am more than afraid that the Muslim community as a community will look upon it also as a interference in religion.

Q. Do you think their point of view in this matter is correct ?

A. It is incorrect.

Q. May I ask you again what would be the number of persons who would resent this law mainly or solely on the ground of interference in domestic life. I hope it will be a very small number.

A. I should think so. It would be smaller than those who will take it as an interference in religion.

Q. Is it not a fact that there is an age of marriage fixed in nearly all the civilised countries ?

A. I believe so. I am aware of the laws of most of the civilised countries.

Q. When all the civilised countries do not consider the fixing of an age of marriage as an interference in domestic matters why should it be particularly so in India ?

A. I say so because of my knowledge of the people of India.

Q. Do you think then that the civilised persons of India are more touchy than the educated people of other countries ?

A. This is a very general expression. From my knowledge of the people I say they will regard it as an interference.

Q. Don't you think the law of Suttee was an interference in the social laws of the country ?

A. To a certain extent it was. It was on the same level as the interference which may result by this law.

Q. Do you think the Government was justified in enacting a law prohibiting Suttee ?

A. I believe, yes.

Q. Do you think Government was justified in enacting the provisions regarding the age of consent in the Indian Penal Code ?

A. Yes, some law had to be made for regulating general morality.

Q. So what sort of law would you propose for regulating general morality ?

A. I would leave the law as it is.

Q. Are you in favour of a law regulating public morality ?

A. I can't imagine any civilised government without some law on that line and the people of any country that would not resent some law on that line.

Q. Are you satisfied with the present state of the law on this matter ?

A. No. I say the law does not bring in all what we have in our mind.

Q. And therefore you want an improvement in the present law ?

A. By evolution. I do not want legislation.

Q. Although you consider that the present law is imperfect yet you don't want an improvement in it.

A. I did not say, 'imperfect.' I said some law is needed and we have that law.

Q. Do you think this law is defective or perfect ?

A. It is not perfect in the sense that the underlying object is not gained.

Q. So there is room for improvement in the present law ?

A. There is room for improvement in the state of things. Law is different from social improvement.

Q. So what sort of social propaganda would you suggest ? Should there be any legislation ? Would you appoint some panchayats or societies for doing propaganda work ? What method would you suggest ?

A. I will leave it to the people themselves.

Q. You have already said that the people have done nothing in this direction for the last 100 years ?

A. They ought to do it. They ought to be taught to do it.

Q. How would you teach them ?

A. As you teach any other thing.

Q. By legislation ?

A. Do you teach things by legislation ?

Q. I think so.

A. I disagree.

Q. Do you not stop murder by providing capital punishment ?

A. I say teach doing things, not teach committing sins.

Q. Don't we do many things by legislation. You said you were in favour of legislation for compulsory education. That is doing things by legislation. In the same way can you suggest any legislation which would, at any rate, expedite the training of the people in this direction ?

A. It is not in my thoughts at present.

Q. Has the State any duty in this matter ? Has it the duty of ameliorating the conditions of the people ?

A. The first duty of every state is not to go against the feelings of its people.

Q. Although the feelings may be unjustified ?

A. Yes, the first thing is to remove those feelings and then to build on that.

Q. How ?

A. By teaching people, by educating people.

Q. What other means can you adopt except legislation ?

A. I am not prepared to take it.

Q. You are against all legislation by which the State performs many such other things ?

A. I would not answer that question put in such a general form.

Q. But are you against cohabitation of man with a woman before she has attained the age of 16 ?

A. Before 18, I said.

Q. But would you like that this state of affairs should exist in India ?

A. Absolutely not.

Q. It should be stopped by any proper method ?

A. Yes.

*Mr. Kanhaiya Lal* : You believe in the removal of social evils by social evolution ?

A. Yes.

Q. Would it not expedite the removal of such evils if there is some legislation cast in such a manner as to cause the least possible resistance ?

A. I would favour it if you are sure that the line you are pursuing is of the least resistance.

Q. The greater the evil the more the urgency of removing it ? Is it not ?

A. That follows.

Q. What we have found is that there is great deal of physical degeneration of the people, there is very large infantile mortality in the country, much larger than in any other country, there is large maternal mortality, the weight and sizes of the babies are below the normal. Taking all these things into consideration don't you think a state has been reached when if we want our social and political amelioration we must adopt some methods to save the people from further physical degeneration ?



A. Yes. Indeed so.

Q. If we were to adopt legislation, do you think even fixing the age of marriage at 14 would cause much resentment ?

A. I am afraid, yes.

Q. Would it be so serious a resentment as to justify our holding back our hands altogether ?

A. To my mind fixing the age at 14 is really touching the fringe of the problem. It is useless.

Q. Still it would prevent early marriages among 60 per cent. of the people taking Hindus and Mohammadans together. If we can do nothing better lest we might cause general resentment, we might start at that as the first moderate step.

A. In reaction it would bring in the thought that it is quite good at every age and I do not want to force that idea.

Q. Are you aware that when in 1891 the age was raised from 10 to 12 there was a general howl in the country and more particularly in Bengal and yet after the legislation was passed we heard nothing ?

A. I don't believe you have reaped good fruits.

Chairman : That is why you have heard nothing !

Mr. Kanhaiya Lal : You know Mr. Justice Suleman tried recently a case from the Farrukhabad district. The girl was 11 and the husband was 30. The girl received injuries. The man was tried and eventually punished. Every year there are two or three cases in every province and there has been some deterrent effect of this legislation on the minds of the people.

A. Very negligible.

Q. Still in the interest of the people do you think there will be any real harm if you fix the age of marriage at the lowest possible minimum, say at 14 ?

A. I very much like to say yes, from the bottom of my heart I wish I could say yes, but I can't.

Q. What is the difficulty ?

A. The difficulty of resentment.

Q. We are not courting disaster, I am using rather a strong expression, if we fix the age at 14. If you fix it at 18 you may be courting disaster as King Amanullah did.

A. 14 will be useless.

Q. But useful to deter many with the possibility of less resentment ?

A. It will be useless because you cannot get what you want to. It is all a mere juggling with figures. Your age should be such that you will be assured of good results. But having it at 14 will be only temporising.

Q. But in view of the possibility of resentment suggested by you, should we not adopt the line of least resistance ?

A. If you do not get the object in view what is the good ?

Q. We will get forward in our object.

A. I do not think so, and I will not budge an inch from 18. Anything less than that if you sanction by law, I fear you will be doing more harm to social evolution than otherwise.

Q. Can we not begin with 14 and after 4 or 5 years raise it ? Will that not accelerate the evolution ?

A. What will it accelerate ? Merely legislating is not our goal. If you can thereby help to expedite the object underlying it, then I will agree with you. Can you imagine that by your fixing the age at 14 the number of the most painful cases will become less ? After all if you make a penal law you will have to be very strict. If a man succeeds in proving that there has been a difference of two days he is off and he must be let off.

**Q.** Are you prepared to face the continuation of the evils, namely, physical degeneration and infantile mortality ?

**A.** Let us cry hoarse to remove this evil, but it should not be by this way.

**Q.** If there is to be legislation for marriage, what age would you have ?

**A.** 18 for girls and 22 for boys.

**Written Statement of SYED AFZUL HUSSAIN, Vakil, High Court, Vice-President, Anjuman Quwatul-Islam, Fyzabad.**

1. There is not a general dissatisfaction as regards the age of consent as contained in ss. 375 and 376 of I. P. C., but there can be no question that the intelligent public feels the pinch of the law about the age limit. The feeling is not very intense, but there is a craving for the extension of the age. (I reserve a detailed answer for my oral evidence).

2. There can be no question that early marriages are an impediment to the general growth of the human structure. There are very many instances (I refer to own personal experience during my social service works) where mere girls of 13 or of 12, became mothers of some three children. Many of them have fallen victims to tuberculosis and other diseases. The results are too obvious to be dealt with in detail over here. For the general advancement of the Indian Nation it is essential that mothers should be quite hale and hearty, for if they are unhealthy their children are sure to be unhealthy and sickly.

3. Not frequent, but occasionally. It is no gainsaying the fact that most of the cases do not even see the light of the day. The raising of the age by the amendment of 1925 has not proved a success. The slight advancement in the age limit was not the true move. Practically little difference is visible, though some difference is visible in fact. I recommend that the age of consent (for marital 15) be raised to 16. To me the better course is to make a statute forbidding marriages below 16.

4. There are instances on the strength of which I say that the amendment of 1925 has been somewhat effective by putting off marriages beyond 13.

5. The age of puberty ranges from 13 to 14. In the low caste people the girls, owing to abject poverty and lack of proper nourishment develop their signs of puberty generally at the age of 14 or 15. In the middle class from 13 to 14 according to constitutions. Rich girls attain puberty before 13. There can be no doubt that girls in the meat-eating communities attain puberty earlier. I beg to reserve a full answer for my oral evidence.

6. Before puberty, very rare.

Soon after puberty ; very common in almost all classes.

Before the girls completes 13—too rare.

Such cases are always kept very secret and they do not see the light of the day. They do not come to court.

7. Speaking for the Muslims in general, I say that there is no religious injunction, although we find an Arabic proverb—and some go so far as to say that it is a Hadis.

“They are good persons whose daughters do not have their menses in their (parents) houses.”

The practice of marrying girls has got a hold in the average society. The parents are laughed at and sometimes looked down if their daughters are married after twenty.

As there is no religious injunction to marry girls at an early age so there is no prescribed punishment.

In my part of the country girls are married in the middle classes at 15 or 16. I know instances where parents have been mocked at by marrying their daughters after twenty.

8. The Gaona ceremony differs in various classes and communities. Among the average Hindu society the girls are married at 13 or 14 and alike is the custom in the middle class Muslims. But in the low classes of both the sister communities girls are generally married when they are only ten or nine. In these cases the Gaona takes place after the girls attain puberty. It is generally performed soon after the attainment of puberty. There have been cases where Gaona has been performed just after consummation. But they are very secret and rare.

9. No, I consider Consummation will not be injurious if performed two years after the attainment of puberty, i.e., at the age of 16.

10. There is practically no education at present in the females in this country. Unless a girl is well educated she cannot realise the consequences. To me it seems, while looking to the other side of the picture that 16 should be the age for realising the consequences. If a girl cannot realise at the age of 16 she will never realise for her life.

11. In fact I have not come across with any case in my profession, but I know several cases where girls before attaining puberty, owing to the lust of their husbands have been ruined physically and in the end have fallen victim to severe diseases. I know one case of Gorakhpur of which the medical persons said in the end that the whole defect was due to early co-habitation. One girl was only 13 when she was married, another similar case came to my notice in connection with the social service work at Ajodhya last year.

I also know for certain that a very rich man got himself married to a girl of just above 12 and she died just after a year of consummation leaving a poor baby which also died after a few days.

I can also relate a number of other instances, which I humbly reserve for my oral evidence.

12. Early marriages are disastrous to the whole Indian Nation, and it is our sacred duty to put a stop to them. I hold for myself too that the number of maternal and infantile mortality will decrease a good deal if early marriages are stopped. The sooner it is stopped the better.

13. Most certainly there is a development of the intelligent public opinion about the extension of the age. It is particular and confined to the educated persons only. The masses have neither cared nor they will care.

14. Old women in this part of the country have a tendency in general to favour early consummation so that they may have grandsons, and grand-daughters to be called Nani and Dadi (grand-mother). But this tendency is fast disappearing in the educated circles.

(I humbly reserve a detailed answer for oral evidence.)

15. Yes, difficulties been experienced. A lot of latitude has been given to the medical men. Honest medical opinion is needed. Therefore the opinion of a medical board is to be needed. Less difficulties will be experienced if the age is extended to 16 years.

16. Certainly, if the age is raised to 16 years.

17. Yes, these offences ought to be classified separately.

The girls' age should be fixed 14 (a fine of Rs. 200 or 6 months S. I.) for marital offences.

18. The offences against husband should be tried by a court of sessions and in Camera trial. A detailed answer is reserved for oral evidence.

19. Free and compulsory education in the masses.

There ought to be some women C. I. D. persons attached to each Police Station.

20. In my part of the country the intelligent public is for fixing a higher age of consent (16) for marital cases and this seems to be more effective, provided there is a penal legislation to that effect.

21. Taking the whole circumstances in view there should be a penal law. Social reforms and education will take generations to achieve the end desired. Therefore the proper and more effective course is to make a penal statute.

**Oral evidence of SYED AFZUL HUSSAIN, Vakil, High Court, Vice-President, Anjuman Qawatul-Islam, Fyzabad.**

(Lucknow, 19th January 1929.)

*Chairman :* What is the membership of your Association ?

*A.* About 200.

*Q.* How long has this been in existence ?

*A.* For the last 10 years.

*Q.* Is this statement of yours the result of consultation among the members of the Association ?

*A.* I consulted many members of the Association and many of the gentry also. No meeting of the Association was held to consider the subject ; but I just had conversations with many people.

*Q.* In your statement you say that the age of consent might be fixed at 16, but a better course would be to have a law forbidding marriages till 16. Is that your personal view, or is it the opinion of the people whom you consulted ?

*A.* That is my personal view. Others hold that the Prophet does not suggest any particular age for marriage and there is also the institution of guardianship. If you fix the age of marriage at a particular figure you will be imposing certain restrictions upon the law of Islam. This is the conservative side of the case. But my own view is that there are no injunctions to the effect that the girl should be married at a particular age, but they are only suggestions. The intelligent public amongst Muhammadans is of course in favour of the age of consent being raised to 16.

*Q.* Do you think Muhammadan opinion will object to the fixing of an age for marriage but will not object to the raising of the age of consent ?

*A.* Yes. From that point of view fixing an age of consent would be much better than fixing an age of marriage.

*Q.* Are there consummation of marriages below 13 in your part of the country ?

*A.* There are cases amongst low class Muhammadans. I know of only one case amongst Hindus, but these things are generally kept secret.

*Q.* Do you think there are cases in which the law of the age of consent fixing the age at 13 is broken ?

*A.* Yes.

*Q.* Are there a large number of such cases ?

*A.* I can say with confidence that there are cases, but they do not come to light.

*Q.* Are there any reasons inherent in the dealing of this question which prevent people from bringing these cases to light ?

*A.* They do not like to embitter the feelings between families and therefore they keep it as secret as possible. That is my view of the case.

*Q.* Supposing the age is raised to 16 as you suggest, you will realise that there will be a large number of cases in which the breach of the law will occur more than

does at present, or, there will be many cases of consummation below 15. How would you prevent it ?

A. Where Purdah is observed, I have suggested that the husband and wife should not be allowed to live with each other till the prescribed age and there should be some restriction like that. In exceptional cases as, for instance, when the husband of the girl is dying the girl can go, but otherwise this must be prevented to the best of our power.

Q. Then would you require a law like that ?

A. Yes ; I am personally for that.

Q. Do you think that people object to the marriage law because it curtails their liberty to marry their girls at any age they like ?

A. I find that a cousin cannot be married according to the Hindu law, but according to the Muhammadan law that can be done. I think that was permitted with the object of creating better feeling between the families. Supposing there are two brothers, and one of them is rich and the other poor, then in order to retain the property of the rich man the cousins can be married. I think that was the only motive for early marriages also. There have been such cases in Lucknow and I think that early marriages were intended only for such purposes. But amongst the average Muhammadan community consummation of marriages takes place only at or after 14. From my own point of view I think that it is a social crime that a girl should be married early. For that some legislation should be enacted and I do not think that the intelligent muslim public will resent it.

Q. Would you therefore recommend the raising of the age of consent rather than fixing an age for marriage ?

A. Yes.

Q. In para. 1 you say that there is dissatisfaction. What is the dissatisfaction due to ?

A. There is dissatisfaction because the age of consent is too low. The intelligent Muslim public wants it to be high.

Q. What do Muslim ladies think about it ?

A. There is a tendency amongst the old ladies that they should have children who should call them grandmothers, and therefore they want their girls to be married early. But that is now disappearing fast.

Q. Do you think that Muhammadan girls attain puberty earlier because they are meat-eaters ?

A. Yes ; that is my opinion.

Q. What is the age at which they attain puberty ?

A. In U. P. the average Muhammadan girl attains puberty at 14 or 14½. But I find that *Qassab* girls attain puberty at about 13.

Q. Do you think that *Qassab* girls eat more meat than the other girls ?

A. That is what I was told.

Q. What is the age of puberty amongst Hindus ?

A. 15 to 16. That is why as a compromise I fixed the age of consent at 16.

Q. What is the Arabic saying that you refer to in para. 7 of your statement ?

A. I have brought from an Imam of Fyzabad who is an authority in these matters, extracts from a book called *Wasa-il-ul-Shiya*. He said that it was the most authentic book on *Shiya* expositions. It says that there is a *Hadis* from Imam Jafar Sadiq to the effect that "Virtuous is one whose daughter does not have menses in the father's house". There is another *Hadis* to the effect that Gabriel came to the Prophet and said that unmarried girls are like fruits of the sun and air, so that they must have that thing which they require, namely, as soon as they have menses they should be married, (meaning that it is better to marry them) ; for they are after all human beings and they might be misled. The third is from the Prophet him-

self saying that they are good people whose daughters are married before they attain the age of puberty.

*Q.* You have said that there should be women C. I. Ds. What do you hope to get out of them ?

*A.* I mean that in every village or town there must be women who should receive some pay, and it should be their duty to bring such cases to the notice of the authorities. I suggest women because these matters are generally private.

*Q.* Do you mean to say that in order to report such cases you want that there should be a sort of women police to investigate such cases and bring them to light ?

*A.* Yes.

*Mrs. Beadon :* In para. 11 you refer to the case of a rich man who married a young girl. Is it a recent case ?

*A.* It was about 6 years ago.

*Q.* Would you mind giving us other cases ?

*A.* A girl of 12½ was married and she has now 7 children and she has just caught tuberculosis. She is now only 23.

*Q.* If a woman has children at intervals of one year only, she is likely to develop tuberculosis. Can you tell us of any cases in which as a result of the first child-birth the woman had trouble ?

*A.* A girl of 14 was married. She became a mother after a year or so. I have found that in such cases they become victims to tuberculosis. Perhaps the purdah system contributes half and early child-birth contributes half to this state of affairs.

*Q.* How long after child-birth did the girl get tuberculosis ?

*A.* Within 40 days.

*Q.* What was the caste of the girl ?

*A.* Muhammadan.

*Q.* Did she belong to a well-to-do family ?

*A.* She belonged to the average middle-class. There was no question of poverty or want of food.

*Q.* Is there much of tuberculosis in Fyzabad ?

*A.* There are many cases in high class Muslim societies. It is mostly amongst purdah ladies.

*Q.* You say that in a certain case the mother died and the child died shortly after. Was it a recent case ?

*A.* It happened some 2 years back.

*Q.* Are there numerous cases like that ?

*A.* I refer here to cases where as soon as the children are born the mother is dead.

*Q.* How many such cases have you seen within the first year of child-birth ?

*A.* Half-a-dozen at least. I hold that purdah and child-birth are responsible for these deaths.

*Q.* What about the children of these young mothers ?

*A.* They generally die after the death of the mother.

*Mrs. Nehru :* Have you had any occasion to talk on this subject with young Muslim ladies ?

*A.* There is very little education amongst the Muslims ladies, and they are sailing in the same boat as the old ladies. Their purdah stands in the way of their education, and their opinion is naturally influenced by the opinion of the old ladies.

*Q.* Do you think that the evil is so much amongst Muslims that there is any need for such a law ?

*A.* There is very great need for the law. For the good of the community I think that there should be a law fixing the age of consummation at 16.

Q. Does consummation before 16 take place in all classes of Muhammadans ?

A. In the case of the average Mussalman community in Oudh about which I know, as soon as the marriage is performed the husband and wife are allowed to live together. Sometimes the girls are married at 15 also, if they are well-developed.

Q. Is it so both in the towns and in the moffussal ?

A. The higher classes generally marry their girls at 13 to 18. It is regarded a sin not to marry a girl till 18.

Q. Does it apply to all class of people that they are ridiculed if their girls are not married before 18 ?

A. Yes.

Q. Is it the opinion of the Muhammadans in all the places you know of ?

A. Yes ; I know the conditions in Fyzabad, Gorakhpur, Allahabad, Basti and other places, and I find that the opinion is the same, namely, that a girl should be married before 18, or soon after puberty.

Q. What do you think about the *Hadis* or saying that you quoted ? Do you think that they are interpolations ?

A. They are only suggestions. Being a Shia myself, I have a great respect for the *Hadis* but I regard these only as suggestions, because there is no compulsion in them.

Q. You say that you want women police for the detection of these cases. At the same time you admit that if the right sort of women are not forthcoming, it will not be of much use. Do you think that that sort of women will agree to take up this work ?

A. Those who are really interested in the social reform of the country and who have got education will make some sacrifice, I think.

Q. Will they work as employees of the C. I. D. ?

A. There are lady teachers who will take up this work, and there is no necessity for extra women.

Q. You want the punishment to be Rs. 200 or 6 months' imprisonment. Do you not think that it would be punishment on the poor people only ?

A. We must look to the law in general. In the case of the rich it will be sufficient punishment if the matter is brought to court. His reputation will thereby be jeopardised.

Q. Why do you not say that it should be fine, and leave the amount to the discretion of the Magistrate ?

A. I have no faith in these cases being tried by deputy magistrates. They ought to be all sessions cases. Also I think that a heavy fine would embitter feelings.

Q. Do you not think that instead of specifying the amount if you say simply fine or imprisonment it will serve your purpose ? Otherwise you will tie the hands of the magistrate.

A. I think there should be same amount fixed for that.

Mr. Mitra : Do you not know that even in Shia countries like Persia girls are married late in life ?

A. I know nothing practically about Persia. I know the conditions in U. P. and C. P.

Q. Is there any difference in the marriage of girls so far as Shias and Sunnies are concerned ?

A. There is no difference so far as that is concerned. There is no Ayat in the *Quran* saying that a girl should be married at a particular age. There is *Hadis* saying that a girl should be married after puberty. Some people say that the Prophet married a girl of 9, but there is no injunction about it. Nowadays the average class Muhammadans, both Shia and Sunni, marry their girls at 14 to 18

**Q.** Personally are you for consummation of marriage at 16 ?

**A.** Personally I am for 18, but to bring about a compromise between the backward and the educated classes I think it should be 16 for girls, and 20 or 21 for boys.

**Q.** Would you like to have a law fixing the age of marriage ?

**A.** For marriage I am not ready to fix any age. I have not got the courage of saying that I would be in favour of stopping the institution of Vilayat or guardianship. That will create resentment in the Muslim public opinion. The age of consent law will serve our purpose, and at the same time will not displease public opinion.

**Q.** Supposing the age of consent is fixed at 14, what do you think the resentment amongst the Muslims will be ? Do you think that they will consider it against their religion ?

**A.** Early marriages are performed to protect the interests of the girl, and therefore there will be dissatisfaction.

**Q.** Do you not think that what applies to the marriage law will also apply to the consent law ? Will not Muhammadans consider it as interfering with their liberty of action ?

**A.** I do not think so.

**Q.** Are you ready to make any difference between marital and extra-marital cases ? According to Islam adultery is punishable with death.

**A.** It can be fixed at any age you like. I have no objection.

**Mr. Shah Nawaz :** When you say that both among the Shias and Sunnis marriages take place between 14 and 18, may we take it that these marriages are after puberty ?

**A.** Yes.

**Q.** Do you think that it is better that it should be so ?

**A.** Yes ; because marriages coincide with consummation.

**Q.** You have quoted some *Hadis*. Why do you then recommend the fixing of an age of consent when the *Hadis* is against it ?

**A.** They are not injunctions, and I am not bound to follow them.

**Q.** Do you know that the girl has got the right of repudiating a marriage if it has been performed by people other than her father and grandfather ?

**A.** The Shia law does not make any provision for that. It is only *Hanafi* provision. The Sunnis are bound to follow it if you identify the Sunni school with the *Hanafi* law.

**Q.** Is not the husband entitled to demand consummation as soon as the girl attains puberty ?

**A.** But if there is a law that consummation should not take place he will not have that right.

**Q.** At present he can demand that ?

**A.** Yes ; we have also got the law about restitution of conjugal rights.

**Q.** If there is a law would it not interfere with the right of the husband ?

**A.** If you take into consideration the heavy death rates, I think you should prevent the husband from exercising his liberty.

**Q.** Therefore in order to prevent the evil would you go to the length of saying that we must interfere with the legal rights of a person ?

**A.** You will have to choose the lesser of the two evils.

**Q.** Please tell us how are you going to make the law effective between the ages of 14 and 16 ?

**A.** The best thing that I would suggest is to employ women C. I. Ds. who could get these reports.

**Q.** Would they like to do this work ?



A. These village school masters who are respected by the village people can report.

Q. Do you mean to say that they should be witnesses in these cases ?

A. Of course at least one or two should be witnesses.

Q. Will not that prevent them from going to their houses ?

A. If you want to legislate, you shouldn't fear about these things.

Q. How are you going to make this law of consent effective ? Don't you think that it would be far better to have a law of marriage fixing the minimum age of 14 ?

A. I would have for myself agreed to this but I am afraid of the feelings of the average muslim that you will be curtailing the muslim rights of vilayat.

Q. Supposing we were to make exemptions in hard cases, then would you like to have a marriage law ?

A. If you make exemptions in very hard cases, I don't think that the marriage law will be after all very much resented by the conservative people and the feeling will be reduced, but I say that the age of consent law will not be so much resented as the marriage law.

Q. But then will you tell us how to make the consent law effective ? Suppose we were to take a bond from the legal guardian of the boy and girl at the time of the marriage that they should in no case bring the boy and the girl together till a certain age and if they break the bond they will be prosecuted, do you think this will be acceptable to the mussalmans ?

A. Why not ? Surely the mussalmans will accept this.

Mr. Bhargava : May I know if the present law of guardianship is a great encroachment upon the Muhammadan law and the Hindu law ?

A. Yes, but you must at the same time when you pass a law have regard for the general atmosphere.

Q. Do you not think that the law of majority is in direct conflict with the Hindu Law and Muhammadan law on the subject ?

A. Yes.

Q. I understand from the general trend of your evidence that you think that the evil of early marriages is too great. Is that correct ?

A. Yes. I say that my personal views are different from the views of the community.

Q. I understand that you consider early marriage at 12 or 13 is an evil but you don't seem to visualise the importance of stopping such marriages.

A. I say that early marriage is common in the low classes of muhammadans and Hindus.

A. If I tell you that in Bengal amongst the Muhammadans and Hindus generally people marry their girls at an almost incredible age say at the age of 5, 6, 7 and 8, and so on, would you regard any resentment of such people too great to be ignored ?

A. I think public opinion will be against it, if you legislate.

Q. Will you kindly tell me if you regard from a national standpoint but not from a Muslim or Hindu standpoint that sati was a lesser evil than early marriage ?

A. No, it was of the same type.

Q. Then don't you think that no Government should care in a matter of this vital importance for the resentment of those who will be benefited by this legislation ultimately ?

A. If you please ask me my views as a nationalist I think then 16 is the proper age for marriage for girls and 21 for boys.

Q. Now in a matter of this kind leaving aside the national point of view if you think that the evil is too great amongst the muhammadans and 60 per cent of the

muhammadans in Bengal consummate their marriages before the girls attain puberty, do you not think that this is a case in which an heroic step should be taken ?

A. I don't know anything about Bengal.

Q. Take it from me that this is the evidence. Suppose the evil is so great and when you are in charge of the affairs of the Government will you not take this step all at once ?

A. I wouldn't like King Amnullah bring about the whole of the reforms at the same time.

Q. Will you propose as a first step that the age of 14 years may be placed on the statute book ?

A. I mean to say that if the marriage coincides with consummation I wouldn't agree to 14.

Q. Will you agree to have 14 for marriage and 16 for consummation ?

A. Speaking from my own point of view the marriage should be not before 16.

Q. From a muhammadan standpoint, do you think that your suggestion of making the coming together of a husband and a wife an offence is practical enough ?

A. Yes.

Q. Who would report ? This is not a public affair and don't you see that this is an affair which will be done secretly ?

A. I mean that the law is not always ineffective. We must see what law should be enacted just to have greater benefits.

Q. Do you think that the age of consent law will be as effective as the marriage law ?

A. The marriage law would have been more effective but as I said before, the trend of the public mind and of the conservative party of the Hindus and mussalmans do not seem to favour it.

Q. Suppose the law that you propose is enforced in its rigidity and as regards every husband and wife the offence is brought home as soon as they come together, do you think the resentment will be the same as in the case of a marriage law or much more ?

A. My humble suggestion is that the resentment would be greater in the case of the marriage law.

Q. Will you kindly see your reply to Q. 12 ? What do you mean by 'sacred duty' which you have mentioned there ?

A. I mean from a nationalist point of view, but not from a muslim point of view, that it is our sacred duty to put a stop to early marriages.

Q. Would you stick to it inspite of everything ?

A. I haven't got that courage or conviction which Sir Tej Bahadur Sapru has got.

کتاب رسائل الشیعه

حدیث اول

عن ابی عبد اللہ قال من سعادة المؤمن لا نظمت ابلته في بيته

ترجمہ حدیث اول

مرد کی سعادت میں سے بہت ہی کہ اسکی لڑکی اسکے گھر میں  
حائضہ نہو امام جعفر صادق علیہ السلام کا ارشاد ہی

### حدیث ثانی

إِذَا النَّاسُ أَنَّ جِبْرِيلَ اتَّانِي عَنْ اللَّامِيفِ الْخَبِيرِ فَقَالَ إِنَّ الْإِبْكَارَ  
بِمَنْزِلَةِ الثَّمَرِ عَلَى الشَّجَرِ إِذَا ادْرَكَ ثَمَارَهَا فَلَمْ تَجِدَنَّ أَفْسَدَةَ الشَّمْسِ وَ نَثْرَتِهِ  
الرِّيحَ وَ كَذَلِكَ الْإِبْكَارُ إِذَا ادْرَكَ مَا يَدْرِكُ الذَّكَاءُ فَلَيْسَ لَهُنَّ دِرْءٌ إِلَّا الْبَعُولَةُ

### ترجمہ حدیث ثانی

وَالَا لَمْ يَوْمُنَ عَائِيهِنَ الْفَسَادَ لَأَنَّهُنَّ بِشِيرٍ - ارشاد فرماتے ہیں  
اے لوگو جبرئیل خدا کی جانب سے خبر لائی اور بیان کیا کہ کنواری لڑکیاں  
بمَنْزِلَةِ پھل کے ہیں درخت پر جسوقت پھل طیار ہو جائیں اور چن نہ  
جائیں گرمی افتاب خراب کردیگی اور ہوائیں ارزا دینگی ایسی ہی  
کنواری لڑکیاں جسوقت بائیں رہ چیز جسکو عورتیں پانی ہیں یعنی  
حائضہ ہر جائیں تو نہیں ہی انکی دوا مگر شوہر یعنی شادی کردی جائی  
وَالَا فساد کا انسے خوف ہی اسلئے کہ وہ بشر ہیں

### حدیث ثالث

قَالَ رَسُولُ اللَّهِ ﷺ مَنْ سَعَادَةُ الرَّجُلِ أَنْ لَا تَحِيضَ ابْنَتُهُ فِي بَيْتِهِ

### ترجمہ حدیث ثالث

\* مرد کی سعادت سے یہ امر ہی کہ اسکی لڑکی اسکے گھر میں  
حائضہ نہ ہو

**Written Statement of Miss C. B. ADDERLEY, M.B., Medical Superintendent, Lucknow Child Welfare League, 19, Clyde Road, Lucknow, dated the 14th August 1928.**

2. (1) Not justified.

(2) An advance on the present law is, in my opinion, justified by the fact that a girl of 14 has not reached her full development and marriage and childbearing at such an early age are likely to hinder her development.

3. I do not know.

4. I do not know.

5. I have not collected statistics on the subject but my experience is that girls attain puberty in this part of the country at 13 or 14 years of age, though it is often earlier. I have not found that caste, community or class make any difference in this. Climate makes a difference.

6. I believe cohabitation to be common in all these cases mentioned, among the wealthy but uneducated classes, *e.g.*, those of the Bania caste. An intelligent but uneducated Kayasth woman told me the other day that it was altogether a matter of money, the richer the parents the earlier the marriage. She told me that her own dowry was Rs. 2,000 and that she was married, (and cohabited) at the age of eleven. She appeared to be proud of having been married so young. Her daughter was married at 14, in the same month as that in which puberty occurred. I have usually found that very young wives belong to the families of rich but uneducated Hindus. Mohammedans do not, in my experience, marry so young.

7. I have always been given to understand that the practice of the early consummation of marriage was due to religious injunction, among Hindus, but I have no certain knowledge on this point.

8. I do not know, save having heard of these ceremonies.

9. I do not consider that the attainment of puberty is a sufficient indication of maturity to justify the consummation of marriage.

At whatever age puberty may take place, I consider that eighteen is the youngest age at which a girl's physical development is sufficiently advanced to allow of marriage being consummated without the risk of injury to her own health and that of her children. Up to that age her natural energies are all diverted towards her own growth. If she becomes pregnant before she is fully grown, she or the child, or both, will inevitably suffer impairment of health.

10. Eighteen years. A girl's physical and mental development go together.

11. I have seen many cases in which babies born of mothers under sixteen years of age were delicate from birth, from no cause except the mother's immaturity. I have attended the confinement of a girl of eighteen or thereabouts, which was normal, but it was her second baby. The first confinement took place when she was thirteen years of age, and Caesarean Section had to be performed, as her bones were not sufficiently grown to allow of a normal labour. I have attended the confinement of a girl of thirteen years old in which delivery had to be effected by forceps and was difficult, due to the smallness of the pelvic bones. I have attended many confinements of comparatively young women who had had several children and who had osteomalacia, since the first or second pregnancy. In all the cases of osteomalacia I have come across, the patient had been married at thirteen or fourteen.

12. I consider early maternity responsible for a great deal of mortality of both mothers and infants. A very young mother has not sense enough to take proper care of her infant. Lactation is too great a strain on the strength of a mother who is herself still growing. Such mothers, enfeebled by child-birth—lactation, are less able to resist any infection to which they may be exposed such as tuberculosis.

A girl who marries and has children very young is not likely to attain to the degree of intellectual development which she might otherwise reach, and the intellectual and social progress of the nation is thereby hindered.

13. I do not know.

14. I do not know.

15. It is very difficult, if not impossible, to tell a person's age exactly, or even within a year or two, from a physical examination. More exact registration of births would be the only way to remove the difficulty. At present when a birth is registered, the name of only one parent is registered, and the child's name is not. Sometimes, I find the name given is not even that of the child's father, but that of the head of the family; it is merely stated that a birth has taken place in so and so's family. Then it is almost impossible to trace the date of any person's birth. I do not see how anyone can obtain a certificate of the date of his birth, years afterwards, with any certainty that the date given is not that of the birth of some

other member of his family. Births are registered before the child is given a name, but possibly the difficulty will be overcome.

16. I do not think so.

17. I would separate extra-marital and marital offences into different offences because the social consequences to a girl who is the victim of an extra-marital offence may be very serious, though the physical consequences may be much the same in both cases. The age of consent should be the same in both cases, for the reasons stated in the answers to questions 9 and 10.

I have no views on the matter of punishment, except that the punishment for extra-marital offences should be greater than for marital offences in view of the more serious social consequences.

18. I know nothing about the procedure in trials.

19. I do not know anything about this.

20. I consider that penal legislation fixing a higher age of consent for marital cases is less likely to be effective than legislation fixing the minimum age of marriage. If a girl is married at an earlier age than that legally fixed as the age of consent, it is very difficult to ensure that consummation will not take place. If consummation takes place before the age of consent, in the majority of cases nothing will be known about it, no complaint will be made, unless the girl suffers immediate physical injury, and not always then either.

I do not know what public opinion on the matter is.

21. Education and social propaganda are of far more value in the progress of social reform than legislation, but they will not go very far without it. I would not rely on either alone. Laws may be passed, but ignorant people will evade them. Propaganda work may be done for years, but people will still refuse to listen to commonsense, until compulsion is used.

**Oral evidence of Miss C. B. ADDERLEY, M.B., Medical Superintendent,  
Lucknow Child Welfare League, 19, Clyde Road, Lucknow.**

*(Lucknow, 19th January 1929.)*

*Mrs. Beadon :* How long have you been in Lucknow ?

A. Since March 1927.

Q. Have you had other experiences in India ?

A. I was for five years at Cawnpore and for a year and 3 months in Hazaribagh.

Q. Have you a knowledge of the conditions in different parts of India ?

A. Yes.

Q. Do you find that child marriage is common in India as a whole ?

A. Yes.

Q. What is the age of marriage you find ?

A. My impression is that generally the age of marriage is 13 or 14.

Q. Is your work here amongst Muhammadans and Hindus ?

A. Yes.

Q. Do they avail themselves of the child welfare centres here ?

A. Yes.

Q. Would you mind telling us something about your child welfare centres here ?

A. There are six child welfare centres here each of which is in charge of a Health visitor. Nurses are trained and they have midwives working with them. There are in all 14 midwives. Of those 14, 10 are trained and the remaining 4 are untrained in the work and out of these 4, 1 is not an educated lady but she has a good

deal of experience though she has not passed any examination and that is why I don't call her a trained midwife. The Health visitors are to supervise the work of the midwives and visit the children of our confinement cases upto a year old.

Q. Now do the expectant mothers amongst Muhammadans come up?

A. A very few of them come up.

Q. Is that on account of purdah?

A. I think so.

Q. Then do you begin to visit them from the sixth or seventh month?

A. We seldom visit them. In some cases indigenous *dais* are being utilized. We visit them once after confinement. We visit as many as we can of the indigenous *Dais* cases.

Q. How many cases did your midwives confine last year?

A. Roughly speaking they confined 1,770.

Q. Did the Hindus form the majority?

A. Hindus and Muhammadans were half and half.

Q. Of these were there more mothers under 12 or 13?

A. 3 were of 12 years old.

3 were of 13 years old.

5 were of 14 years old.

17 were of 15 years old.

Q. About the mother of 12, did she deliver alright?

A. Yes. About the mothers of 13, in one case the baby was premature and in another case the baby was very small and died. I know two more cases one at Cawnpore and the other at Hazaribagh. The one at Cawnpore delivered safely but it was after very great difficulty that she delivered safely because of her immaturity. In Hazaribagh the girl was 13 years old and had a Caesarian operation because she was too small to have a baby born normally. She was advised to go to her mother's house and not to have another baby till 18. She came again between 17 and 18 and I found a normal living child.

Q. Now have you seen the children of these young mothers? What is your opinion about these children both at birth and when they grow up?

A. My opinion is that such children are small and more delicate than those of older mothers.

Q. Do you take the weight of the babies?

A. We weigh some of them occasionally but we do not do it as a routine.

Q. In your own opinion the age of puberty is between 13 and 14 both amongst the Muhammadans and Hindus. Is it not?

A. In the majority of the cases it is so.

Q. Have you ever seen any cases in which there have been serious injuries as a result of cohabitation?

A. No, not here.

Q. Do you meet with eclampsia here a great deal? Don't you get it amongst the young women specially?

A. We get it.

Q. Do you find that these mothers in your child welfare centres are able to nurse their babies as well as the older mothers?

A. Without further going into the question I cannot answer this question. Of course all mothers begin by nursing.

Q. Do you find a great deal of tuberculosis amongst the cases that you get in your centres?

A. Not a great deal.

Q. Is there a great deal in the first mothers or in the second mothers ?

A. It is not in the case of first mothers.

Q. You say that the age of consent will not be of much use. So would you like to fix an age for marriage.

A. I think it is better to fix an age for marriage. I would put down 16 for marriage but I would prefer 18.

Q. What age would you prefer to have in extra-marital cases ?

A. I would prefer to have it above 16.

Mrs. Nehru : Are the later born children of these young mothers stronger than the earlier born children ?

A. That altogether depends upon the mother's own state of health but I say in a good many cases when the mother delivers her first child at an early age, she either gets osteomalacia or tuberculosis afterwards.

Q. Supposing she is not suffering from any particular disease and she gets a child after two or three years, will that child be stronger than the one which she has delivered earlier ?

A. In this work I haven't had enough experience, because I do not see the same mothers again.

**Written Statement, dated 8th September 1928, of the Hon'ble Mr. Justice GOKARAN NATH MISRA, Judge, Oudh Chief Court, Lucknow.**

1. Yes, there is some dissatisfaction with the state of the law as to the present age of consent as contained in section 375 of the Indian Penal Code. The dissatisfaction is chiefly among the educated classes of the country and the enlightened ladies. As ideas of education and hygiene have been developing the ideas of the people have also been undergoing a change. There is now a class of people consisting both of men and women distinctly in favour of raising the age of consent from 13 to 14 at least. I am not, however, aware of any dissatisfaction in the opposite direction.

2. I would advocate an advance on the present law and would raise the age of consent in the case of a wife from 13 to 14 and in the case of a non-wife from 14 to 16. The circumstances justifying the advance in my opinion are, that in order to reduce the large percentage of infantile mortality in this country and in order to improve the health of the women folk in general in this country, it is necessary that no sexual connection should take place until the women are sufficiently developed. I would go even beyond 14 years but at present I do not think it advisable that we should go beyond that limit. In the case of those who are not wives of the persons with whom they have sexual intercourse the age ought to be raised to sixteen which is the age for the offence of kidnapping. This is necessary in order to prevent the large traffic in bringing up women for immoral purposes which is going on in the country. When a girl has attained the age of 16 she does possess sufficient understanding to realize what she is being asked to do.

3. The crimes of seduction and rape are quite frequent in the United Provinces and if the present age of 14 be raised to 16 probably there would be lesser cases of seduction for immoral purposes. As to the cases of rape outside the marital state I am also of opinion that the raising of the age would also reduce cases of rape.

4. In my opinion the amendment of 1925 raising the age of consent within the marital state to 13 years has been to some extent effective in protecting married girls against cohabitation with husbands within the prescribed age limit. First of all people have taken to postponing the marriage beyond 13. In communities like that of the Kanya Kubja Brahmans who mainly reside in the United Provinces where the practice of marrying the girls at an early age existed the practice of *gana* ceremony prevailed. It had the effect of allowing the consummation to take place at an age when the girl had reached the age of puberty. The effect of the law has

been to create a public opinion which now condemns the marriage of girls until at least the age of 14 has been reached. I am, therefore, of opinion that the age of consent can safely be raised to 14.

5. The girls usually attain the age of puberty somewhere between 14 and 15 years of age. In some exceptional cases they seem to attain the age of puberty between 13 and 14 years. This undoubtedly differs in different castes, communities and classes of society. Girls belonging to low castes take longer time in attaining puberty whereas those belonging to higher castes attain it earlier. It also depends whether the girl belongs to a poor family or a rich family. In the case of well-to-do families girls attain the said age earlier than those who are poor. I would also like to mention that in my part of the country girls belonging to *Khattri* caste are generally found to attain the said age at a comparatively early age.

6. Among some classes where early marriage prevails and no system of *gauna* ceremony exists the cohabitation does take place if the girl that is married has not completed 13 years. No such cases, however, come to court. People consider it a great disgrace to take such cases to court. Besides the girl is unprotected and nobody in her husband's house is interested in seeing such a delicate matter go to court.

7. There is so far as I know no religious injunction in the Hindu books of law sanctioning the consummation of marriage before puberty. There are on the other hand to be found passages against such a practice. But in books of later day origin there are to be found passages which condemn marriage of a girl after puberty. Their origin appears to be due to the feeling of insecurity which prevailed during the days of the Muhammadan rule. The result of this was that child marriages and early marriages became the order of the day, and when this evil practice grew it also resulted in many cases in early consummation of marriage.

8. The *gauna* or *grinhibandan* ceremony is prevalent in some castes and communities. Where it prevails it usually coincides with the consummation of marriage. It is generally performed after the attainment of puberty, there, however, being no fixed rule as to how many years after the attainment of puberty. It is usually performed in the 3rd or the 5th year after the marriage. Where the girl is married when she is 10 years old her *gauna* takes place in the 5th year and when she is 11 or 12 years it takes place in the 3rd year. But there is no fixed rule that it must be performed in the 3rd or the 5th year in such cases. The matter is left to the settlement between the parents of the girl and the boy. In some cases I have seen it postponed even to 7 years, as it was in my own case. The "*grinhibandan*" was performed after 5 years of the marriage and the "*gauna*" was performed after 7 years.

9. I do not consider the attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage. I would not allow any consummation of marriage before the girl has attained the age of 16 years. I would postpone the consummation to 2 or 3 years after the attainment of puberty because in that case the girl will have been sufficiently developed physically and she could give birth to progeny without much injury to her own health or that of the progeny.

10. I would fix the age at 16 but a girl might be able to give her consent in some cases somewhere between 14 and 16 years. Whether she would be able to give an intelligent consent is a different matter. I would leave that to every individual case. I am, however, definitely of opinion that in no case a girl below 14 is able to give an intelligent consent.

11. Yes, several cases have come to my knowledge where a girl of tender years was married to a full grown man and the girl was severely damaged and her health was permanently impaired to this extent that she ceased giving birth to any progeny. The matter is delicate and I would not give more details.

12. Yes, I consider early consummation and early maternity to be a great deal responsible for high maternal and infantile mortality and for other results vitally affecting the intellectual and physical progress of the people.



13. Yes, since the passing of the Act in 1925 there has been a general development of public opinion not confined to any particular class that the age of consent fixed by the legislature at 13 is not enough. The opinion is now rapidly growing in favour of an increase in the age. Everybody whom I have consulted seems to be in favour of 14. Even there is a growing feeling among the women of the country for the increase of the age. They advocate 16 but I think it would be safe if it is fixed at 14.

14. The women in my part of the country never favoured early consummation of marriage but they were helpless when the girls were married at an early age.

15. There has already been experienced difficulty in determining the age of a girl in cases under sections 375 and 376, I. P. C. It is very difficult to determine whether she is 12 or 13. If the age be increased to 14 the difficulty might be lessened to some extent.

16. It is for the medical people to give a definite answer to this question. I have stated in the answer to the previous question as my opinion that if the age is fixed at 14 the margin of error is likely to be reduced.

17. I would separate the marital and extra-marital offences into different offences. In the case of extra-marital offence I would give a heavier punishment. The scale of punishment for illicit married intercourse prescribed in section 376A is in my opinion quite suitable. For non-marital offence the scale of punishment prescribed in Section 376 is quite suitable.

18. I would suggest no change in the existing procedure. At present the cases under Section 376A which deals with marital offences can be tried by a Presidency magistrate or magistrate of the first class. This is quite proper. The other cases are triable by Presidency magistrates or district magistrates or by courts of session. This is also quite satisfactory.

19. I am not prepared to suggest any safeguards beyond those existing at present against collusion to protect the offender, etc.

20. I would have both penal legislation fixing a higher age of consent for marital cases and legislation fixing the minimum age of marriage. The public opinion is in favour of both kinds of legislation.

21. There can be no doubt that social reform can be best attained by means of education and social propaganda. But looking to the condition of our country I am of opinion that legislation is also necessary to attain the object which we have in view.

**Oral Evidence of the Hon'ble Mr. Justice GOKARAN NATH MISRA,**  
Judge, Oudh Chief Court, Lucknow.

*(Lucknow, 19th January 1929.)*

*Chairman :* Are you aware of the social conditions of the people in cities as well as in villages or more particularly of the people in cities ?

*A.* I am aware of both.

*Q.* Are the views that you have given us as your written opinion intended to cover the generality of cases ?

*A.* Yes, that is so.

*Mrs. Beadon :* In your answer to Q. No. 11, you say you have knowledge of several cases in which girls of tender age were married to fully grown men as a result of which their health was permanently impaired. Would you mind telling us the details of one or two cases without disclosing the names that came to your knowledge within the last 3 or 4 years ?

*A.* I would very gladly give you one instance. It is a very clear one. I have got my own family house on the other side of the river. Close to that house there is a brahmin family, the members of which constantly had occasion of coming

and going to our house. This brahmin had a daughter to marry. He was not possessed of very large means and consequently he couldn't find a suitable boy in age for the marriage of his daughter. His own wife came to the ladies of my family and complained that it was not possible for her to get a suitable boy in marriage for her daughter. The matter was brought to my notice and I sent for the man and asked him as to what was his position. He explained his difficulties to me and I said I could help him a little say with a sum of Rs. 100. The man said that in order to get a suitable boy in his community, the sum which I offered was not sufficient enough but I said I couldn't offer more. Then I did not know what happened. But after some time I found that he had married his daughter to a man who is an astrologer in the city and is aged 50 to 55 whereas the girl was only of the age of 13 or 14. Well, a year after I heard that a child had been born to that girl and soon after I heard that the child was dead. The ladies of my house couldn't give me the reason for the death of the child. I found out that the reason was due to the disparity of age and the child was born when the girl had not reached a sufficiently mature age. The result of this case has not only been that the first child has died but that the poor girl has ceased giving birth to any more progeny. You will find this to be a very clear case.

*Q.* Did this happen recently ?

*A.* This happened about 10 or 12 years ago.

*Q.* Can you remember any other similar case ?

*A.* Yes. There again was a client of my own. I was appointed by the Board of Revenue to be the Advocate of a certain lady whose estate was under the Court of Wards. This took place some 20 years ago. I continued doing her work. It so happened that during this interval this lady happened to pay a visit to Lucknow. At that time my wife was alive and she saw her and the two became friends. Naturally I asked my wife as to what opinion she had gathered about her. She told me several things which are unnecessary to relate. But there was one thing which she related and which impressed me deeply. I considered that statement to be quite true because that was corroborated by the facts which had appeared to me from the record of that case. It had appeared from the record that the lady was born in 1886. The marriage of the lady was performed in 1897, i.e., when she was 11 years old. When the husband found that the wife whom he had married was only 11 years old, he within six months of his marriage with this lady, married another woman who was about 17 or 18 years of age. The man died after some time say in 1901. Now the lady told my wife confidentially that sexual intercourse between her and her husband had taken place when she was only 12 and that intercourse had proved a source of great trouble to her. I mean it had practically ruined her health and ever since that time, she had been subjected to constant attacks of hysteria which she couldn't get rid of. That is now the position of the lady. I think this is also a very clear case.

*Mrs. Nehru :* In your statement you have said that you want the age to be raised from 13 to 14 and the reason why you want to advance from 13 to 14 is to meet with the desire of the people but generally people want 16. How have you come to this figure of 14 ?

*A.* I should say that the opinion in the country has been undergoing a change from the time the age of Consent Committee has been sitting right up to the present day. Personally I am in favour of raising the age to 16 but I feel as that when responsible men, we look to the position in which our community stands at present and also to the fact that till recently we have considered it to be a proper thing to marry our girls when they reach the age of more than 12 years the age need not be more than 14. If you fix 14 as a first step then a great deal of agitation might be avoided, and that is the reason why I have raised it from 13 to 14.

*Q.* Do you think that there will be much agitation if the age of consent is raised to a higher figure than 14 ?

*A.* What I feel is that there will be some agitation. Besides this you would be creating complications if you allow the marriage to be performed at 14 and con-

summation later on. I want the two ages to be the same. So let it be for both purposes 14. That would in my opinion be a very desirable thing. When you fix the age of 14 for marriage, it does not necessarily mean that every marriage would be performed at the age of 14. That is only the minimum limit. But it is one thing to attain a particular object by legislation and it is quite another thing to attain the same object by means of public opinion. I would therefore leave it to public opinion to fix the age of marriage at 16, but I would have it fixed at 14 by the legislature. This is the position which I am taking now.

Q. You think that by raising the age to 14, 16 will be reached. Is that what you mean ?

A. Yes.

Q. You have referred to rape cases in U. P. Can you give us details of those cases ?

A. As a Judge I have tried several cases, but it is not possible for me to give details.

Q. What is the age of the girls in those cases ?

A. Sometimes 10, sometimes 11 and sometimes even less than 10 and so on.

Q. Were the majority of cases that you have seen below 16 ?

A. Yes.

Q. Have you come across more of seduction cases or more of rape cases ?

A. I have come across both.

Q. Do all these cases come from the poor society ?

A. Yes. Cases of rape or seduction do not usually happen in respectable families.

Q. Have you noticed such cases more amongst the Muhammadans or more amongst the Hindus ?

A. I don't think that there is any distinction to be made in respect thereof in the two communities.

Q. Do you think that any change in the process of trial is necessary for these cases ?

A. I think the trial system of which prevails at present is quite satisfactory as will appear from my written statement.

Q. Do you think that all the extra-marital cases that happen come to courts ?

A. I don't think so, because there is a regular traffic going on between Punjab and the U. P. In U. P. there are some persons who go round the villages and collect young girls of a particular age and keep them at a particular place for a year or two and then they are sold away. Such cases don't come to court.

Q. Do you think that it is desirable to devise any means to search out those cases ?

A. I don't know whether your Committee has got power to enter into that inquiry.

Q. Don't you know that it is included in the terms of reference ?

A. If so then it is all right. The law as it stands is quite sufficient for the purpose. I do not think anything more is required than the ordinary law.

Q. Some people suggest that it is necessary to try those cases on the spot wherever they are caught because they think that the villagers find it very difficult to travel from one place to another.

A. They always go to the police station and the police takes good care to take cognizance of such cases and I think the ordinary courts of law are quite sufficient. It is not necessary that those cases should be tried in those very places where they occur.

Q. Then you have suggested that this law has created a public opinion against early marriages. Have you had any experience of any such cases ?

A. I have not experience of individual cases where marriages were postponed on account of the existence of this law or the consummations of marriage were postponed. But this much I can say that in 1925 this bill was passed, and prior to that I didn't see people going and consulting their friends. But after the amendment of the Penal Code in 1925, several of my friends have come to me and consulted me on the question of the age when it would be desirable to marry their girls or to allow the consummation of marriage to take place. I asked them what is the reason for this. They said "that some legislation had been undertaken in the Legislative Assembly and they also said that the Government's idea was that they shouldn't have marriages of their girls at an early age. I said it is very good and that they should postpone the marriage of their girls upto an age when they were fully developed." It is from that experience that I have made this statement.

Q. Then your idea is that these people generally know about this law ?

A. Yes.

Q. Do you think that a girl at the age of 16 is quite old enough to realise the consequences of her act whereas for other things she is considered mature at the age of 18 ?

A. I say that at the age of 16 the girls are able to form their judgments. But 18 is the age of majority fixed according to law. This however is a quite different thing. My opinion is that the maturity of mind with regard to the questions connected with property, etc., should be distinguished from the maturity of mind for the purpose of consent.

*Mr. Bhargava* : What age would you recommend for extra-marital cases ?

A. You can fix it at 18.

*Mr. Mitra* : If it is not possible to have a marriage law, then are you ready to raise the age of consent to 16 ?

A. My answer is that though personally I would be in favour of having the age of consent fixed at 16, but looking to the circumstances in which the country stands at the present moment I would rather hesitate in fixing the age limit at anything beyond 14.

Q. What punishment would you suggest for infringement of the marriage Law ? Should you have fine or imprisonment or both ?

A. I would have both but I would leave the question of punishment to the discretion of the magistrate.

Q. Are you ready for providing exemptions in the marriage law in rare cases ?

A. If the age under the marriage law is fixed at 14, I wouldn't have any exemptions in that case.

Q. If we cannot have a marriage law and if we only have a consent law, then, do you recommend that the guardianship may be left with the parents till her sixteenth year ?

A. I say that after the marriage you must let the girl go to her husband's house, and no question of guardianship would arise in that case.

*Mr. Shah Nawaz* : Will you please tell us whether the legislation recommended by you will be accepted by the men and women in the villages who are illiterate ?

A. If you fix the age of marriage at 14 and also raise the age of consent to 14, then I think it will be accepted by them. I may say that their ideas have also changed.

Q. Do you think that the illiterate women would also like to wait and postpone the marriages of their daughters till 14 ?

A. Yes. Once you tell them that it is the Government's wish, they will abide by it.

Q. Have you reason to believe that in those classes who do not observe *gaona* the husband and the wife are brought together ?

A. They are.

Q. And they live in the same room ?

A. Yes, they do.

Q. Do you think that these smritis regarding pre-puberty marriages are interpolations ?

A. My opinion after the study of Hindu Law is this that in the earlier smritis like those of Manu and Yagnyavalk you find indications suggesting that the marriages should only be performed when the women have reached the age of puberty. You will also find indications in those very smritis that the age of 25 is a desirable age for the marriage of a man and the age of 18 is a desirable age for women but one fails to observe anywhere any rule in the older smritis to the effect that if you do not perform your marriage at such and such a time you will be considered to have incurred a sin. This is only to be found in the latter commentaries of those smritis and from that I infer that this rule is only of recent growth. By recent growth I mean 1,000 or 1,200 years. It is certainly not a rule which was prevalent among the Hindus in ancient days.

Q. Do you think that the feeling to marry girls before they attain puberty is of later origin and after the puranic period ?

A. Yes.

Mr. Bhargava : In olden times according to your study of Vedic literature were girls married when they were fully grown up ?

A. Yes. One does not find instances of marriages of girls in the older smritis at the age of 12 or 13.

Q. And from the mantras recited at the time of *garbhudan* and from certain texts of the Vedas you are of opinion that it was usually after 16 ?

A. I think so.

Q. And consummation used to take place on the 4th day after marriage ?

A. I think so.

Q. You have been speaking of *gaona*—May I know what is your opinion about *gaona* ? Is it also of recent growth after the early marriages came into vogue ?

A. I think so.

Q. You do not find any indication in the smritis or Dharm Shastras prescribing an age or rituals for *gaona* ?

A. No. *Gaona* is practically in the nature of an arrangement by way of readjustment so that consummation might be delayed till maturity. It is a sort of *rukhsati* ceremony.

Q. It has been suggested that if you fix an age so low as 14 it is bound to react on those communities in which marriageable age is advancing beyond 14 and it will be popularly believed that 14 is the proper age.

A. The reaction is not likely to be in that direction. I do not think that those who marry their girls at a higher age will, if the age be fixed by the legislature at 14, begin to marry at the lower age.

Q. You have been pleased to say when the age was raised to 13 some people came to consult you and they thought that 13 was the proper age and the public opinion was to that extent stimulated. If you place the age at 14 the stimulation will be much less than if you place it at 15 or higher and considering the fact that in some parts of India there is a ceremony called *gaona* and one year usually passes between the period of marriage and sending the girl to the husband's house. Would you place the age of marriage at 14 and the age of consummation at 15 ?

A. No. I would have the same age because difficulties will arise from having one age for marriage and one for consummation.

Q. Some communities have *gaona* that is postponement of consummation and the same thing can be perpetuated by fixing a higher age for consummation than for marriage. It may happen that it will be easy for the parents of the bride also to wait for another 6 months.

A. I would have only one rule.

Q. But it is the unanimous opinion of the doctors that if maternity should come before 16 then it is injurious to the growth of the girl.

A. I have already said I am personally in favour of 16 but what I do not like is that any agitation should be created throughout the country and it is only with that object in view that I have suggested the fixation of the age by legislation only at 14.

Q. If I tell you that the evidence given by many of those who were affected by this legislation is to the effect that they do not object very much to the fixation of the age of consent and that they are very much against fixing the age of marriage.

A. I am fully aware with what generally happens in Bengal and in Madras and I would not go beyond 14. I do not want any agitation on this question so I am in favour of having the age fixed as a first step at 14.

Q. At present in the U. P. *gauna* is going out of use and in many cases *pata pher* ceremony takes place on the next day.

A. That is true and that is why I have said that you would not be able to prevent consummation of marriage after the marriage.

Q. Does *pata pher* take place immediately after marriage ?

A. In my community it takes place where it does on the 4th day.

Q. As an auxiliary to the marriage law if there is a provision made that the civil courts or preferably the district judge is authorised to prohibit marriages beneath the prescribed age fixed by statute under the law of guardianship, are you in favour of that ?

A. I am not in favour of that. I am in favour of having a strong rule of law. The age which I have prescribed is an age which I should like to be enforced and enforced very rigorously.

Q. That law will be there but that law will not invalidate or prevent marriages. Will you favour provision authorising District judges to restrain marriages in proper cases before they are celebrated ?

A. Yes, if you go to the district judge he will certainly in the case of minors say 'do not marry before that age.'

Q. But there is no law against the father or grandfather. Do you not want a provision like that ?

A. I have no objection in having a rule laid down in the civil law to the effect that civil courts should be authorised to issue an injunction to prevent marriages below an age that might be fixed by legislature.

Q. Supposing we are not successful in having a marriage law ?

A. I think you will be successful if you fix the age at 14 but if you try to fix it up at 16 difficulties might arise.

Q. Supposing we are not successful would you like that a law relating to the age of consent or as a substitute for it we may have a provision in the statute book to this effect that instead of punishing the husband when the husband and wife come together the magistrate on being satisfied that it is so, may issue a rule asking the parties to show cause why the husband and wife should not be separated up to that age which is prescribed for the age of consent ?

A. I can depict to myself hundreds of marriages taking place at 12 in rural areas in the District of Lucknow. I feel that it will be rather difficult to ask the District Magistrate or the Sub-divisional magistrate to find out all these cases which have happened in villages where such marriages have taken place and to ask the parents of those girls to execute bail bonds not to send them to their husbands' houses before the age has reached.

Q. Suppose 20 marriages of girls below the age of 13 are consummated in a village while the girls are below the prescribed age. Do you realise that 20 pairs shall have

to suffer the consequences of breaches of law if the age of consent is strictly enforced and there is no resort to taking of bond ?

A. If you want the rule as to the age of consent to be enforced I would call upon not only every husband but upon every person who infringes the law to be dealt with by criminal law ; I would not have any compunction. I would call upon the parents to execute those bonds.

Q. Are you in favour of enforcing this rule of age of consent at 14 ?

A. Yes.

Q. How do you think those cases of breach of consent law will be brought to light if there is no marriage law ?

A. They would be brought to light on reports of persons many of whom would be found in villages and who would be interested in seeing that such a rule is observed. First of all these persons would report such cases and then to a certain extent the police will also do something and it is only in this way that you will be able to bring cases to light.

Q. Will you make them cognisable ?

A. I would make them cognisable if they happen in the case of ages from 12 to 14. If the people know that the offence is cognisable in that case the law would be observed with great force.

Q. Do you think the resentment will not be very great and the chances are that in many cases men will be harassed by the police ?

A. Any law that you make will be resented by the public but you will have to take that risk.

Q. Would you suggest a preliminary enquiry by the magistrate ?

A. Yes, I have no objection to that.

Q. After the police has investigated the case the magistrate may make his own enquiry. Is that what you want ?

A. Yes, after a case is brought to the notice of the magistrate though previously investigated by the police the magistrate may make his own preliminary enquiry.

Q. Are you in favour of enforcing registration of marriages ?

A. That is a thing about which I would like to make a statement. In addition to my memorandum I would like to suggest that there should be a system of registration of births and also a system of registration of marriages. The system of registration of births, as it at present exists in the U. P., is not very satisfactory. The system in the villages is that a birth is reported to the chowkidar of the village. He has got a book in his possession in which an entry of the birth is made when he brings it to the police station. At stated intervals the chowkidar takes the book to the officer in charge of the police station within which the circle of that chowkidar lies. The information is communicated by the chowkidar to a constable or head constable especially in charge of this work at the police station and this police officer makes a corresponding entry in his own register kept for the purpose. It has however come to my notice both as a lawyer and as a judge that in many cases the information that is given to the chowkidar is not correct. Sometimes it happens that no information at all is communicated to the chowkidar at other times it happens that the information which has been given to the chowkidar or the entry which is made in the police register based upon that information is vague and indefinite. I would ask this Committee to consider this question and to report to the Government that some steps should be devised in order to make this system of registration of births more effective. In case the marriages below a certain age are made penal it is extremely desirable that the system of registration of births should be effective and accurate.

I am also in favour of introducing a system for registration of marriages in this Province. I would adopt the system which at present prevails in Bengal. I would suggest the introduction of non-official persons as registrars and they might be paid a certain fixed sum out of the fees realised for such registration. For this purpose

the services of the *sarpanch* appointed in villages under the Village Panchayats Act of 1920 might be availed of.

*Q.* In Bengal the registration of these marriages is optional ; it is not obligatory on the parents to report such marriages. If you are making a law preventing the celebration of those marriages below a certain age it follows that you must have a very accurate registration of marriages ?

*A.* Certainly.

*Q.* Will you place the obligation on the parents to report in these cases ?

*A.* In order to have this registration of marriages accurate I would propose that it should be a duty cast on the parents to report every marriage to the registrar concerned and the report should be made at both the places, i.e., where the marriage is celebrated and at the place where bridegroom lives. I think no difficulty would arise if the compulsion to report is laid both on the parents of the bride and the bridegroom. The object would be attained if the report is sent separately or by both.

*Q.* If you have got a marriage law in that case law of age of consent could be made cognisable because cases will be very few. Is it not ?

*A.* I do not think for some time there would be only a few cases. Even if there is a marriage law I would make the cases relating to the infringement of the law relating to the age of consent cognisable.

*Q.* Would you place a further restriction that such cases may only be investigated by Inspector of Police or by Deputy Superintendent of Police or would you give the power to the ordinary head constable ?

*A.* In my part of the country cases are not enquired into by head constables. They are enquired into by persons of the status of sub-inspectors of police. There are ordinarily two sub-inspectors attached to a police station but in some police stations which are small there is only one sub-inspector in charge of that station without there being a second officer. An important case is always enquired into by the officer in charge and in certain cases it is enquired into by the second officer. The enquiry into these cases should in my opinion be made by officers not below the rank of Sub-inspectors of police.

*Q.* Would you give the names of the boys and girls, whenever they are named, in the birth register ?

*A.* Certainly. With regard to registration of births where the name of the boy or girl is not given at the time of the birth a provision may be made casting the duty on the parents to file a supplementary report containing information with regard to the name of the boy and the girl whenever it is given.

*Mr. Kanhaiya Lal :* Would you like to have special matrimonial courts to expedite the disposal of these cases and to inspire more confidence in the public mind ?

*A.* I would certainly like to have matrimonial courts only for marital cases but I consider the expenses involved in establishing such courts would be prohibitive.

*Q.* Suppose we have a magistrate and 2 non-officials of an honorary character of a superior calibre than ordinary honorary magistrates, the expenses would be nil. They would only meet when there is a case and try the case ?

*A.* I think it would not be possible.

*Q.* Suppose they are honorary there will be no difficulty ?

*A.* If you have got honorary magistrates and you want more the District Magistrate can create more honorary magistrates.

*Q.* But we want to have suitable people for these cases.

*A.* If expenses can be avoided by appointing honorary magistrates for this purpose I would not oppose this suggestion.

*Q.* It has been suggested that these marital cases should be allowed to be compounded in suitable instances at the discretions of the magistrate in order that



good relations might be restored between the husband and the wife. Would you recommend compounding of such cases ?

A. I would like that marital cases be compounded if the magistrate considers the case to be a fit one.

**Written Statement dated 14th August 1928, of Mr. S. S. NEHRU, I.C.S.,  
Deputy Commissioner, Rae Bareilly.**

1. The educated classes generally, the social reformers particularly, are not satisfied with the sections as they stand. The illiterate masses are too far steeped in ignorance to think of these sections even when they feel the evil of early cohabitation. The mass-mind does not know of it and evidence for prosecution in criminal cases is vitiated by the personal factor. To the Indian mind, with its superiority complex in the moral field, it seems inexplicable that illicit intercourse with unmarried girls—and India is not advanced enough to afford the luxury of licit intercourse—should not be punishable, since the act is regarded as a most infamous one, bringing the greatest dishonour and deserving the most condign punishment. Indian opinion should therefore wholeheartedly support any raising of the age of consent outside marital relations.

2. The question of raising the age of consent has two aspects, viz. (i) outside the marital state and (ii) within the marital state. As regards the first it has already been stated that Indian opinion of all classes is favourable to the raising of the age of consent, to at least 16 years if not 18. Girls under that age are of too immature minds to properly assess the damage they are doing to themselves, their health, their character and reputation, and their future prospects as well as to the honour of their family, in consenting to illicit cohabitation. They are easily seduced under the mainspring of curiosity and stand in need of protection. The age of consent should therefore be raised to 16 outside the marital state.

3. As regards the other aspect of the question, there is distracting difference of opinion. The masses are conservative to a degree and not agreeable to raising such age. It is true, education and socialisation, are doing their work like leaven on the obtuse masses and the marriage age is gradually rising, even if the marriageable age conforms as it always must to nature's laws is gradually rising. It is felt by many people that the raising of the age of consent within the marital state to 14 (if not 16) will strengthen the hands of social reformers. Of course the penal section against husbands requires to be worked with great care and circumspection; and the safeguards provided will, as in the past, ensure that it is not employed so as to harass the people. There is however the possibility of cases in which so serious an injury may result to an immaturesly developed wife that action might be necessary. But the law has to be administered very cautiously, as evidence is not easy of access. Taking a typical district and accepting human nature as it is apt to be modified for India, it may be noted that the crimes of rape and seduction are not unduly frequent, as the following figures will show :—

	Rape.	Kidnapping (of all kinds).
1926 . . . . .	4	23 (16 found true on investigation).
1927 . . . . .	4	29 (13 found true on investigation).

The amendment of 1925 was too recent and too mild to make any appreciable difference. However, it is bound to have a salutary effect on the situation. As an instance it may be mentioned that a rape case in which a girl of 13 was the victim was recently convicted to the satisfaction of the villagers concerned. It was a case in which consent was alleged and which would not have ended in conviction, but for the amendment of 1925.

4. I know of no case in which a husband was prosecuted under section 376 I. P. C. under the amended section. No appreciable effect of the amendment in postponing the consummation of marriage or putting off marriage beyond 13 years has been observed, but the raising of the age does stimulate public opinion in that direction to some extent. Village opinion is however still immature and unresponsive.

An intense educative propaganda against early and immature marriages together with legislation rendering such marriages illegal and imposing liability of fine on parents marrying their children below a certain age will be much more effective in achieving the desired object than merely enforcing the penal law against husbands, which, though necessary, can be used only sparingly for obvious reasons.

5. The usual age for puberty is 13 to 14 years. It does differ in various classes of society, e.g., the more luxurious the life of the family, the earlier is the age of puberty. Again village girls who go out grazing cattle alone and idle their time and are exposed to the attentions of rude men also show an early development.

6. Cohabitation is not common before puberty, but is more or less so soon after puberty, and sometimes before the girl completes 13 years. Such cases have not however come to court within the past few years within my experience.

7. The practice of early consummation of marriage soon after puberty is due more to social usage than to religious injunction. Some *Shastric* authority is cited as saying that the marriages celebrated before puberty are the best. The penalty for the breach of the injunction would be excommunication and *Prayas-chit*. But marriages above the age of puberty now take place even in the highest castes and nowhere is this penalty of excommunication enforced. The *Shastric* authority is however contested by several.

8. *Gauna* ceremony is common in these parts. It usually takes place at or soon after the age of puberty, say within a year or so.

12. Early consummation and consequent early maternity are to be reckoned as some of the many potent causes resulting in the deterioration of the physique of the people.

13. Among the educated classes the opinion is generally very sound in favour of the raising of the age of consent.

14. Women favour early marriages; because marriage of a child is considered an obligation on the part of the parents and everybody wants to discharge it as early as possible. Moreover the ceremonies connected with marriages and *Gaunas* are among the few occasions of festivity and amusement open to women and they want to have them as early as possible. There is no thought given as a rule to the consequent consummation of the marriage and its evil effects.

15. No difficulties have been experienced, expert medical evidence being usually followed. But it is apt to go wrong.

16. This may be so to some extent as it is difficult to distinguish the ages between 13 and 14.

17. It will be better to separate the extra-marital and marital offences. The punishment for extra-marital offences should remain as it is; for marital offences the maximum punishment should be 5 years R. I. with an alternative of fine and there should be no whipping, however well deserved, as a wife who gets her husband whipped will not be very popular in society.

18. Marital offences may be made triable by District Magistrates or especially empowered magistrates, instead of exclusively by Sessions.

19. The present safeguards, that the offence is a non-cognizable one, and no cognizance can be taken by any one except a District Magistrate, have worked well and should remain intact. No case of extortion or improper prosecution has occurred within my experience. Wives do not usually make such complaints and it would be indiscreet to pry into domestic affairs and impossible to ferret out facts unless there is any sensational case, and less so even then.

20. In my opinion legislation fixing the minimum age of marriage is likely to be more effective than raising the age of consent for marital cases. Both will require to be popularised by means of extensive propaganda and punishment is a good form of propaganda. The minimum age legislation with penalties of fine will however be more acceptable, but not advisable.

21. Both should go hand in hand. Education and Social propaganda must remain the chief means of eradicating the evil, but legislation is also necessary to strengthen the hands of reformers and providing means of correction for the obstinate. Old customs have a tendency to harden even when people have lost reasoned faith in them. Legislation will in that case be very effective in strengthening the hands of propagandists.

### Oral evidence of Mr. S. S. NEHRU, I.C.S., Deputy Commissioner, Rae Bareilly.

(Lucknow, 19th January 1929).

*Chairman.* I believe you have been in several Districts in the U. P. before you became D. C. at Bareilly?

A. I was at Allahabad, Lucknow, Hamirpur, Shahjahanpur, Almora, Naini Tal and Kumaon Districts.

Q. In such of the Districts as you have been have you had reason to think that the age of consent law at 13 has been broken in some cases?

A. In one case I know it was. Very few cases come to light.

Q. Have you reason to believe that they do exist?

A. Yes.

Q. What reasons do you suggest for their not coming to court?

A. There are many reasons. In the first place it is a domestic matter and nobody wishes to make such things public, and coming to court means loss of money on both sides and in the third place it means contact with police and naturally a lot of trouble on that account too. Then of course family troubles are raised and other people try to take advantage. Then the parties prefer through their panchayats or through friends or through their religious leaders or through their council to come to compromise out of court because when they come to court it is difficult to arrange it.

Q. There is every reason for conspiracy of silence or an attempt to hush up the evidence. Is that what you mean?

A. Certainly.

Q. If the age of consent merely is raised do you think the law will be any more effective than what it is at present? Will those reasons disappear for not bringing cases to light?

A. Raising the age of consent will be a sort of extra weapon in the armoury which may not be used. It will be very difficult to threaten everybody and use it as it should be used. It will have some deterrent effect.

Q. Would you prefer a law of marriage to age of consent law?

A. I should certainly have age of consent fixed and if also a law of marriage is fixed it would be better but I would rather have the age of consent. The age of consent and the age of marriage are like two brass and earthen pots and if you send them down-stream together the earthen pot is likely to be damaged, by which I mean the law of marriage. I think the age of consent is strong enough to go through. The law of marriage is difficult to enforce; in other words you will have to prove the age.

Q. You will have to prove age in age of consent also ?

A. In the case of law of marriage you will have to prove the age and there will be penalisation at every step.

Q. You have said that legislation fixing the minimum age of marriage is likely to be more effective than raising the age of consent ?

A. It is certainly more effective.

Q. If the age of consent stood by itself do you think that will be more effective in both the object being to postpone maternity ?

A. The best thing is to have the two together but if you have to choose between the two I would have the age of consent.

Q. Supposing there was age of consent merely and there is no law of marriage, what age would you have ?

A. In marital cases I would have it at 14 and in non-marital cases at 16 at least but the higher it is the better.

Q. And what would you have as the minimum age of marriage ?

A. 14.

Q. Would you have both these ages on a par ?

A. Yes.

Q. Would you not have a lower age for minimum age of marriage and a higher age for age of consent ?

A. No.

Q. Have you any suggestions to make this law of age of consent by itself more effective so as to bring more cases to light ?

A. (1) You must give plenty of publicity and propaganda.

(2) There should be co-operation. I would give you an example. In France they have special prizes for having big families. Encourage late marriage by giving prizes among the depressed classes and amongst those classes who have early marriages.

(3) Rewards should be given to complainants for cases that come to courts.

(4) Rewards for greatest possible successful cases which are conducted in courts and publicity through priests and mukhias.

Q. You want to give more publicity to the results so that they may be known ?

A. Yes. These are the few examples. Under the United Provinces Act you have panchayats in every village having a population of 2,000 or over and panchayats could look after this very elementary matter.

Q. You want to put the obligation on them to inform ?

A. Not obligation but they can use their influence to bring such cases to light.

Q. Supposing the minimum age of marriage is fixed at 14, do you think there is any danger in Indian homes both Hindus and Mohamedans, of girls going wrong.

A. I think it is impossible to lay down any hard and fast rule : it is an individual and personal matter with the girl. I would give you a few points. I do not make any fetish of early marriages and I am not in favour of late marriages either. I will tell you the experience of a few countries. We seem to think that because Europeans have got late marriages therefore they are satisfied.

Q. Let us be definite about certain ages. The question arises about immorality at ages of 14—16 or 18. At the most the witnesses have gone up to 18 as the age of marriage. Medical witnesses have gone to 16 but they would prefer 18.

A. I would give you definite cases whether delay in marriage after puberty is likely to lead girls to go wrong. I was going to tell you about the experience of a few countries where the girls after attaining puberty contract a certain sort of alliance which is in a way early marriage. Where boys and girls have co-education they have a sort of alliance. In those girls that have a tendency to flirting

have early marriages which is not exactly marriage but a sort of alliance. For instance in America they are having what they call companionate marriage which is a marriage which is most prominent among people who know better among the so-called co-educationists. From the under-graduates to post-graduate schools boys and girls from the ages of 14 to 16, of course after the girls have attained puberty, contract these alliances and they live together as man and wife on the understanding that they should have no children. The reason is this that nearly 80 per cent. of the students are self-supporting so that the boy and girl realise that they could combine their resources to their best advantage. They are accelerating early alliances and at the same time lessening the religious and moral character of marriage. I can also tell you of the extreme east that is Russia. I was there before the War. In the higher society the position was that a boy and a girl could live together without any obligation on either side and should separate whenever they liked and there was no restriction to children either. There also there was a tendency to early alliances at 15 and upwards. So you see I am talking of two extreme countries where the girls and boys go in for high education; they postpone marriage but have early alliances and in a way that prevents girls going wrong if she waits after puberty.

Q. In America where there is co-education of girls and boys is sex education imparted to them?

A. Sex education as such is not given in the schools and colleges, but from the beginning they have compulsory hygiene class. They are taught anatomy and physiology.

Q. I want to fix the conditions where these things are obtaining. Is sex education given that is to say are they told that if there is early connection these will be the results and these will be the disadvantage?

A. In the classes sexual hygiene is taught.

Q. So we say where there is co-education of boys and girls the tendency among them is to have connections at the age of 15 and upwards both in Russia and America?

A. Yes.

Q. What about the adult marriages?

A. It has been established in Germany, for instance, that late marriages lead to the girls especially those who are independent and carry on their own professions and live in towns, entering into temporary alliances and indulging in what they call 'secret prostitution'.

Q. By late marriage you mean marriage at 20?

A. It all depends. If the girl has to wait till she accumulates enough money it may mean about that age.

Q. If there is late marriage meaning thereby marriages at 20 and after is there chance of those girls having secret prostitution?

A. There is a definite case made out that it actually exists.

Q. If the girl is married at 18 would that be called late marriage?

A. No.

Q. What would you call late marriage?

A. It is not definite.

Q. Is it generally after 20?

A. Certainly after 20 because a girl in a technical high school or in the arts school would not professionally be independent till 20.

Q. What is the result of that?

A. That leads to secret prostitution. It has led to it actually there in Berlin.

Q. What is the deduction that you draw from all this?

A. Keep to the middle, the *via media*.

Q. Do you consider 16 for marriage to be *via media* ?

A. Not 16.

Q. 14 ?

A. Certainly.

Q. 14 you consider to be quite safe and a *via media* having regard to the evils on both sides ?

A. Yes. Maximum consensus of opinion and feeling is on that point.

Q. You don't think to keep a girl upto 14 is unsafe ?

A. It is not unsafe. If you keep them occupied the mind won't wander about.

Q. We have got occupations for them in the villages ?

A. If you examine all the strata from top to bottom you will find some of them are not occupied. Take for instance a chamar girl. She has purda, does not go to the school and has got all the household drudgery.

Q. Does she not look after the cattle, wash the clothes and take the baby ?

A. She is more exposed to temptation than others. Those of a slightly higher class go to school till 10 or by premium or prize she may go to the school till 14.

Q. What is the conclusion that you draw ?

A. There is no fear of the girls going wrong if there is occupation for their minds and hands. In one word 'moral education' has to be extended. With that you will have less chances of the girls going wrong.

Q. Do you think the age of consent law will be more acceptable to the people than the age of marriage law ?

A. I think people's feelings and opinions are more or less fluid. Whatever you decide is bound to go through in the long run ; so if it is not acceptable to-day it will be acceptable to-morrow.

Q. From the experience of other countries that you have had the advantage of visiting would you advise that we should fix the age of marriage at 14 ?

A. Yes. You can encourage late marriages in the way I suggested before.

Mrs. Beadon : In answer to question No. 1 you say, 'to the Indian mind, with its superiority complex in the moral field, it seems inexplicable that illicit intercourse with unmarried girls—and India is not advanced enough to afford the luxury of licit intercourse—should not be punishable —'. I don't quite understand what you mean by this. You say India cannot afford the luxury of licit intercourse. Marriage is much earlier in India, as a general rule, than anywhere else ?

A. I gave the example of other countries where unmarried girls contract a sort of alliance.

Q. Don't you call them legal ?

A. They are recognised.

Q. But not legal. Supposing there was a child, won't it be allowed to claim the father's estate ?

A. I don't know of any specific cases. My impression is such children are not disqualified. Some sort of contract is entered into and that can be enforced in the court of law.

Q. That is why you make this distinction between India and other countries ?

A. Yes. Indians think that they stand much higher in the moral and spiritual plane than others.

Q. You say 'licit intercourse'. Are you referring to licit intercourse with unmarried girls ?

A. I am referring to this offence of rape.

Q. I don't quite see what it has to do with raising the extra-marital age in India. Would you say that the age should be raised ?

A. Certainly.

Q. Do you think there is a certain age upto which a man should be punished if he has intercourse with the girl even with her consent ?

A. Yes, 16.

Q. You say early consummation and early maternity result in deterioration of the health of the people. Can you give us any cases in which injury might have resulted either to the girl or the child as a result of early consummation ?

A. I have come across a case in which a girl of 11 was raped by a husband. The girl died and the husband was brought in the court and punished.

Q. When was that ?

A. I don't know the exact date. It happened in Calcutta, and the civil surgeon was my informant.

Q. Do you know of any case which you might have personally observed ?

A. I don't know of any such cases.

Mr. Mitra : Don't you think there is a certain number of orthodox people who sincerely believe that according to shastras they should marry their girls before puberty ?

A. I have managed to get some extracts from shastras and I find there is considerable difference of opinion there.

Q. But in practice there are people who sincerely believe in that ?

A. Some people do believe, but there are other considerations besides.

Q. In those cases are you ready to make exemptions when you fix the age at 14 ?

A. No, I am not prepared to make any exemptions. Their sole ground is shastric injunction and when that injunction is missing there is no case for exemption and they are not the judges of what the injunctions say and there is no reason why the enlightened persons should surrender their judgment and discretion in their favour.

Q. You certainly know that there are different schools of thought. Some follow one text and others follow a different text. In Bengal for instance they follow Raghunandan and in other places Mitakshara is followed. If according to the text of one group of people it is clear that there is an injunction for pre-puberty marriage and some man sincerely believes in that, are you ready to provide for exemptions in those cases ?

A. Certainly not. There is a certain sect called the Doukho Bors among the Christians who take the word of Christ at its literal value. They have no clothing and go about as they are. They live in bushes. They are not treated as a minority. No exemptions are made in their case. Why should you surrender your discretion in this matter to the orthodox section ?

Q. As regards extra-marital cases have you any objection to raise the age to 18 when there will be no objection from the orthodox people ?

A. The difficulties are of a practical nature.

Q. Some have suggested that as a first step the age may be fixed at 16 and then later on may be raised to 18. Don't you think that frequent changes are not to the best interests of the people ?

A. Law is an organic growth and you have got to change every 3 or five years. 16 would be good enough now and later on it may be raised.

Q. Have you in view 18 ?

A. It is certainly commendable but not practical.

Q. Why not practical ? The difficulties here are the other way about. When the girl are less educated they require more protection and at 16 they will be less educated.

A. There are tipraccal difficulties in the way. I will mention to you a case of kidnapping. A girl was said to be kidnapped by a paramour and two or three others and married forcibly and the father put the paramour and others in the court. The case was thrown out by the magistrate on the ground that the civil surgeon certified her age to be 18 and another European medical officer also certified it to be that. It came before me in appeal. I crossed that order and said that the girl was 16 and directed the prosecution of the man. The case went to the Chief Court and my warrant was held up. My whole point is that in spite of medical evidence as to the age it was possible for a layman to prove that the age was 16 and not 18.

Q. May I infer that if it is 18 it will be easier to say whether the girl is 18 and protection may be afforded upto that age?

A. There is a chance of that protection being misused. False cases will come in the court.

Q. What punishment would you suggest for the infringement of the marriage law?

A. Imprisonment or fine or both. Leave it to the discretion of the court.

Q. Whom would you like to punish?

A. The parents of both the sides will be roped in as principal delinquents or as abettors.

Q. Will you like to exclude the women?

A. No. It must be left to the enquiring authority.

Mr. Bhargava : In answer to Question No. 20 you say, 'the minimum age legislation with penalties of fine will however be more acceptable, but not advisable'. If it will be more acceptable why is it not advisable?

A. I mean penalties of fine won't be advisable.

Q. I want to know whether in your opinion legislation fixing the minimum age of marriage would not be more acceptable than legislation raising the age of consent?

A. If you have the two together that will save all the botheration that you have in mind.

Q. In answer to Question No. 2 you have sounded a note of caution. You say, 'the penal section against husbands requires to be worked with great care and circumspection and the safeguards provided will as in the past ensure that it is not employed so as to harass the people'. What are the safeguards that you suggest?

A. The district magistrate should make an enquiry and that sort of thing exists now.

Q. You want to enhance the punishment to 5 years. Do you not think if the punishment is enhanced by 5 years there is the least possible chance of cases coming to court?

A. I want to make it more deterrent. In 90 per cent. cases there will be fine only and the magistrates take a lenient view.

Q. Do you want that a very heavy punishment should be given?

A. It must be on the statute book. That is all. It should only be a weapon in the armoury.

Q. Do you find that magistrates are lenient in extra-marital cases?

A. Quite a severe punishment is given. For extra-marital cases the punishment should be as severe as possible.

Q. You have spoken about alliances in Germany, etc. What is the conclusion that you wish us to draw from that?

A. The conclusion is that things are not as they appear to be from a distance. During 21 days my wife addressed 18 meetings and had to face ten to fifteen thou-



sand Miss Mayos. Our impression was that things are not so satisfactory and not so secure as they appear to us from this distance.

Q. May I tell you that this Committee has not been appointed to find fault with the Westerners and I think the Committee will be justified in saying that the state of things existing here in India in regard to early marriage exists nowhere-else. We have to see how to stop the evil.

A. Early marriages were quite common in England in the Middle Ages.

Q. What was the age ?

A. 9, 10 or 11. There is a verse in Shakespeare which I will quote. " Younger than she are happy mothers made " and the retort is " But too soon married are those so early made." Juliet was only 14 at the time of marriage. Lady Caroline was widow at 9. In Rome Manou fixed the age at 8, Numa fixed it at 12.

Q. Why do you fix the age at 14 ?

A. Because it is an easy first step.

Q. Do you think at 14 there will be no appreciable amount of agitation ?

A. It will be less than at 16.

Q. Even if it is fixed at 16 there will not be such a violent agitation. The British Government survived the non-co-operation agitation, will it be difficult to survive this ?

A. People have got to be educated. It is no use thrusting the medicine down their throats.

Q. Even among the orthodox many will be in favour of 16 as you yourself said there is difference of opinion as regards the shastras and if those people who call themselves educated have got a hold over the people they will overcome that opposition. If after some time there is another change there will perhaps be greater agitation once again ?

A. People are not in a mood to accept anything. If they are educated to a certain standard they will take it.

Q. May I take it that at present it may be fixed at 14 and after a few years automatically it may rise to 16 ?

A. With the increase in education and emancipation of women what is to happen to-morrow will happen to-day.

Q. If the age of marriage is fixed do you think government should spend any amount on propaganda ?

A. The Government and some charitable societies should take up this work. I should not throw the burden on any one agency.

Q. If the Government fixes the age does it not become the duty of the Government to popularise the evils of early marriage and early consummation ?

A. There are the charitable associations and panchayats to take up this work.

Q. What do you mean by Government rewards ?

A. Rewards to those who report.

Q. Then you will have the same objection and same sort of criticism as in the case of Excise. Are you of opinion that the Government should subsidize these associations who take up this sort of work ?

A. Vigilance societies can be established and some sort of recognition should be given which may be monetary or in the shape of certificates or it may be wholly moral.

Q. Are you in favour of placing any obligation on the village headman or the patwari to inform the District Magistrate or some other recognised authority where there is a breach of the law ?

A. I should prefer the panchayats to do that work.

Q. Have you got village panchayats ?

A. Yes.

**Q.** In every village ?

**A.** Not in every village but in villages having more than 2,000. Villages within a diameter of three miles are attached to one panchayat.

**Q.** Will you place the burden on the panchayat people and also on the headman just as in excise also there is an obligation on the headman to report the matter to the police ?

**A.** Yes.

**Q.** What do you think of the birth and death registration ? Is it satisfactory in the mufassil ?

**A.** It is the best that we can get for the moment. I can't think of any better agency.

**Q.** Are there many failures to report ?

**A.** There are certain delays and inaccuracies.

**Q.** Suppose this department is transferred to the executive authority, to the collector, will he be able to do it better ? Through his Tehsildar or his deputy he may be able to exercise all sort of control over the chowkidar or the patwari. At present it has been said that this system is not working satisfactorily.

**A.** There are omissions and delays.

**Q.** What do you think of the patwari recording these births and deaths ?

**A.** They are already hardworked. Patwari is always touring about and each patwari has one or two villages under his control.

**Q.** Are there not any rules to the effect that a patwari cannot go out of the village for so many days ?

**A.** There are rules. But he is a hard-worked man.

**Q.** If the patwari cannot take up this work who will take it up ?

**A.** The panchayats will take up this work and they will be most valuable means of propaganda.

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**Written Statement dated 7th August 1928, of Mr. V. N. MEHTA, I.C.S.,  
Collector, Benares.**

1. There is considerable dissatisfaction with the state of law on the present age of consent as contained in sections 375 and 376. The age of consent both for the husband and for the outsider is pitched on too low a level. It is generally felt that in the case of the husband the age should be fixed at nothing lower than 14 preferably 15 and for the outsider at 18. There seems to be no justification whatsoever for fixing the age for outsider at 14 when the age for kidnapping is 16. In the case of girls the age under sections 372 and 373 is 18. The girl is supposed to be a minor incapable of giving consent upto the age of 18 in the eyes of civil law. Intelligent opinion is firm on the point that no girl can give intelligent consent to cohabitation with a person outside the marital state at an age which is less than 18. No person has any business to commit adultery with a girl who is likely to be under 18 and it is persons of this type who would be penalised if the age of consent is brought into line with the age put down under sections 372 and 373 I. P. C.

2. There is nothing to justify retaining the present age of consent and everything in favour of advance under the present law. As I have already indicated in my reply to Question No. 1, a girl is incapable of giving consent before she has reached the age of 18 and the present law limiting the age at 14 grossly handicaps the society in its struggle to preserve feminine chastity by punishing sexual freaks who are always out on the prowl for the gratification of their senses.

3. The crime of seduction and rape is fairly frequent but few of them however reach the prosecution stage because no one is anxious to disclose facts of outrage perpetrated on a girl and money is invariably forthcoming to hush up evidence even when the police or any sex-protection humanitarian society is keen on bringing

the criminal to book. It should never be forgotten that the girl-victim along with her mother and father are invariably ostracised in certain castes for absolutely no fault of the girl if there is evidence forthcoming that she has been raped. I am speaking from personal experience of case work and therefore I think that over 75 per cent. of rape cases never come within notice of properly constituted authorities.

(b) The amendment of the law of 1925 has made such small difference so far as the husband is concerned and the outsider that I do not think it has become a matter of public property. If the law has to be made effective the law must demonstrably fix the terminus at such a stage that it would be a landmark for the husband as well as for the outsider for crying a halt. There is very little difference between the age of 12 and 13 so far as the husband is concerned.

4. As I have noted above the change in the law of 1925 was so halting and disclosed such luke-warm zeal for protecting the interests of the minor bride that it did not strike public imagination and impress them with the fact that an epoch making step had been taken in social advance of the type that the heart-rending scandal created by the case of Phulmani Dasi did and as a result there was the introduction of the age of consent bill in 1890. In a general way it could be said that the age of marriage is being advanced and with it mechanically the age for the consummation of marriage. It is customary except in few cases for the Gauna to take place 3 to 5 years after marriage (odd number of years is necessary) and as public opinion favours the advance in the age of marriage the age for consummation of marriage is mechanically advanced. It would be idle to attribute this result to the halting changes made in the law of consent in 1925. At this stage it would be as well to make it clear that the best way and the one that is most acceptable to the Indian community, for advancing the age of consent would be penalising marriages before a certain age. The almost universal feeling is that marriage before the age of 12 should be stopped. Many people think that the girl should not be less than 14 when she is married. There are several factors working in favour of advance in the age of marriage. In the first place communities which have to pay dowry to the husband's family at the time of marriage of the daughter have necessarily to wait longer to accumulate the sum necessary to find the dowry. Struggle for existence is getting harder and the difficulty of accumulation of dowry money is getting more and more acute. Then in communities where the girl after going to her husband's house has to do manual work the age is bound to be advanced because the husband's people will feel it repugnant to add one more consumer of the family food without its being one more contributor to the family labour pool. There is intelligent public opinion also working in favour of raising the age of marriage but yet there are families which still indulge in pre-twelve-year marriage for the following reasons :—

- (i) In certain middle and lower middle class families where there is the absence of a senior female member in the family due generally to the death of the wife there is tendency to marry away a girl so that she may get proper protector in her *Sasural* people and she may cease to be an object of anxiety to the bread winner.
- (ii) In families which go in for *Kanya Vikrays* I have come across cases in which a husband of between 40 and 50 takes in marriage a child girl. He generally belongs to a family which is considered a low family. He has amassed money by personal exertion. The greedy father and mother do not wait till the girl has reached a reasonable age before the marriage takes place.
- (iii) Marriage takes place early in families which are anxious to have a son born to perpetuate the family or to look after the family estate. In this case both the husband and wife are married young and the consummation takes place at the earliest possible date.
- (iv) Marriages are solemnised early to satisfy the vanity of some old relative on the bride or bridegroom's side.

It is these four classes of persons whom we have to penalise by having on our statute books enactments against marriage before a certain age. In certain parts of India we have reached the stage when the age of marriage is so pitched that bride is in a fit condition to live with her husband immediately after her marriage. This should be the aim of ameliorative social legislation. I am constrained to say that a community that requires an age of consent for the husband is still in the infancy of civilisation. Marriage is a mockery when the bride is not supposed to be of age to give her consent for the consummation of marriage.

5. It is difficult to say at what particular age girls attain puberty. Food and society of married-girl-playmates do play a part. Theories however about girls attaining puberty at an early age in joint families in cities and also in villages have not been invariably borne out by experience. Girls who have not lived in joint families, who have not led the life of luxury and who have led open air lives have reached the age of puberty even at 11 or before. I understand by this expression that girls reach the age of puberty when the first Rajodarshan or menstruation takes place. So it is difficult to say anything as regards this age and from my point of view and (I speak with experience) to treat the age of puberty as a terminus for counting the minimum period that should lapse between it and the consummation of marriage is a fatal thing. I know cases within my own experience when the girls age on menstruation has been 11 and even before that year but the parents would never dream of allowing consummation of marriage in their cases three years after menstruation. Moreover the age at which menstruation appears is to a certain extent the result of action of mind on the body and if we allow pre-puberty marriages still to continue without sanctions the age of puberty is bound to remain low instead of advancing. The parent of the girl would feel that a hot house growth is necessary for her so that she could be baked into a wife fit for garbhadhan and thus fit for the cohabitation of her husband. I would therefore urge with all the emphasis at my command and I have consulted several ladies on this subject before giving my opinion, that no consideration whatsoever should be paid to the age of puberty when considering what should be the reasonable age at which the consummation of marriage should take place.

6. Cohabitation is not common now before puberty. It was not uncommon before puberty some years ago. I have known instances where the marriage has been consummated before the age of puberty but after the age of 12. I shall deal with the results further down but they are disastrous for the bride. Cohabitation soon after puberty is common in communities where the bride is not expected to work with her own hands but where the main anxiety is to have a male child born to perpetuate the family and to look after the family estate. I have already noted that cohabitation taking place shortly after puberty pre-suppose the pre-puberty marriage and the forced hot house growth that is inevitable in pre-puberty marriages scarcely fails to cause damage no less than if cohabitation had taken place before puberty specially where the age of puberty has been low. Sometimes consummation takes place before the age of 13 both in pre-puberty or post-puberty cases with consequences which except in few very healthy girls are disastrous to the mother. Cases of this nature will not come to the court. As I have noted above in certain castes a case coming to court would mean social ostracism. In all castes there is the absence of public opinion that will speak out against physical injury that is done to the bride by evil customs described under this head.

7. I certainly do not attribute early consummation of marriage before puberty or at puberty exclusively to religious injunctions. There is a smriti saying laying down the law of pre-puberty marriage. The smritis prescribe the necessity for begetting of a son but so far I have not come across any passage which lays down early consummation of marriage. All the same there is a false notion in certain communities that the husband commits a religious wrong if he does not cohabit with his wife on the 4th day after the menstruation. I have been told of an instance in which a teacher used systematically to ask for leave for the ostensible object of bestowing his Viradan on his wife on the 4th day and when the superior authority remonstrated he had the temerity to say that he was

not prepared to go against religious injunction. I have come across one passage in the Mahabharat where a Gurupatni cursed a Vidyarthi for not cohabiting with her on the fourth day in the absence of her husband the Guru. She evidently had no son. The idea does exist and it renders cohabitation after puberty at an early age bad for the wife. It is the inordinate pre-occupation of the couple with the procreation of a son that hastens consummation (production of a son, planting of a grove, construction of a temple and sinking of tank these are the four duties laid on the householder). Where expectation of life is so small early marriage and early consummation follow. It acts as a vicious circle as those very devices lead to weak progeny and curtailment of expectation of life. This is the one reason why we all feel that the age of marriage should be raised.

8. Gauna ceremony is universally performed in the U. P. It is generally performed after three years or after five years after marriage that is to say in upper classes where the marriage takes place at 11 or 12 it takes place at 14 or 15 and in lower classes where marriage takes place below 10 it takes place after five years. Generally the Gauna ceremony is coeval with consummation. Sometimes however it is performed as purely a ceremonial and the parents on both sides refrain from allowing the husband and wife to come together. There are two reasons for this state of things (1) the Gauna ceremony is hurried up to please some members of the family or there is enlightened opinion which prevents early consummation of the marriage even where religious preferences point to early performance of Gauna. Gauna generally takes place about a year or two after the attainment of age of puberty but sometimes it takes place even before puberty and very shortly after the age of puberty. I have mentioned where this hurry takes place. Generally it takes place in the case of an unprotected girl, where there is an intense desire for the birth of a male child and where the husband is of advanced age and is anxious to consummate marriage.

9. I certainly do not consider that the attainment of puberty is sufficient indication of physical fitness to justify consummation of marriage. In my opinion the age of puberty should not be taken into consideration for fixing the minimum age of consent within marital state. Though I am personally inclined to raise the age of consent to 16, I think that for practical purposes it would not be safe to put it at a higher figure for the present than 14. I would therefore fix the age of consent for husband at 14 irrespective of when the age of puberty was reached prior to the age of consent. There will however be cases where a girl's development may be delayed and consummation may take place at the age of 14 without the girl having attained puberty. There we must leave it to the good sense of the parent on either side for postponing the time for consummation of marriage but I would under no account allow the age of puberty to have anything to do with the fixing of the age of consent for the husband. I consider that the age of 14 which I have put down as the result of ascertaining general opinion on the matter is in medical opinion a good age in ordinary cases for consummation of marriage. So I am not in a position to say how much it should be delayed after that. For me it is an academic question. Young ladies whom I know now will not agree to marriage below the age of 18 and generally below the age of 22 and so this question is bound to have less and less importance in future but there is demand for the age of consent to be fixed for the husband not before 14 completed years.

10. In my opinion so far as extra-marital relations go no girl is fit to give intelligent consent for cohabitation before she is 18. It is a girl with weak mentality that in the present state of Indian society succumbs to outside temptations. Her will power is weaker than that of the average girl and to protect her from the depredations of male freaks we should fix the age of consent for the outsider at 18.

11. Before I deal with this question I should like to give expression to the universal complaint that I have received from intelligent ladies all over the country that we should be ashamed of calling ourselves a civilised country when on our statute book we have no legislation of compulsory registration of births and

marriages. No country calling itself civilised does not penalise neglect of registration of either births or marriages. Public opinion can only be fostered by bodies of the type of sex-purity-protection leagues and if these bodies were to prosecute those who do not abide by the law they must have convincing evidence to pitch against the volume of lies as regards the age of married girl that may be poured in the absence of compulsory registration. Further down we have been asked as to the method of ascertaining age of the girl in cases that come before court. Medical evidence as regards age is based on the condition of teeth, breast and hair development and general development including the genitals but in the absence of compulsory registration of births I have seen competent medical men give contradictory ages for the same person and give their reasons for supporting their views. Most unsavoury rumours are circulated by the one side or the other against the party that succeeds in obtaining a favourable certificate. It is extremely difficult for a court with contradictory evidence before it to determine the correct age of the person. Medical evidence is ordinarily satisfactory but within a year or six months it becomes a dangerous staff to lean on. For that reason the rule that applies to Europeans and to Christians should I think be made universal for the whole community, that is there should be compulsory registration of births and also of marriages. I am sure if the committee takes up this matter seriously the Government will realise that intelligent opinion is in favour of compulsory registration and will enforce it. In municipalities there is compulsory registration of births though marriages are still not compulsorily registrable but there is no reason why this rule should not be extended to the countryside.

I am afraid it would be medical witnesses alone who would give the detail of age and of the injury sustained but I know as a matter of fact from what I have seen of certain cases that pre-puberty consummation or consummation immediately after puberty results in the lower abdomen being practically destroyed. The wretched girl bride starts her life with abortions, she suffers from nervous prostration—that awful deformity about which Dr. Balfour gave publicity in her fascinating pamphlet “Osteomalacia” is frequent. The girl soon becomes a victim to phthisis. It would be hazardous for me to mention castes or communities where these evils happen but the few instances that have come across my notice are of the Gujarati Vaish community in Benares, the Khattri community, the Agarwal community where the parents on both sides are well-to-do and the hurry is the result of the false notion that the bridegroom is a man and can behave as a man and can be the father of a child. On the altar of this false notion of possessing virility the life of the young girl is sacrificed. The intense pre-occupation with the son-producing motive of marriage does the mischief.

12. I certainly think so. Our appalling infant mortality and the large number of husbands having second wives are chiefly due to the early consummation of marriages. A brilliant writer in a Gujarati Magazine recently wrote about the comparative poverty of vernacular literatures as compared with sanskrit literature and he was of opinion that the early dissipation of virya on the part of the husband has been responsible for his intellectual debility. This is the subject on which one can write at great length but I do not think this would be the proper place to do so. There is the general feeling amongst the educated people that the age for marriage must be advanced and the age of consummation should be advanced still further. They feel that once consummation of marriage starts there is nothing but self-restraint on the part of the parties concerned that would prevent over indulgence at a time when the full development of the male as well as the female has not been completed. Opinions have been expressed that the Muslims as a class are physically better developed than Hindus. It is not that the Muslim is more moral than the Hindu but the immorality that the Muslim indulges in, has to be extra-marital and necessarily the drain on the physical system is less when he has to pay for it than in the case of the Hindu who being married considers an act of cohabitation with his wife as a perfectly legitimate indulgence while in reality owing to its taking place at an untimely stage in his development it is an immoral act as well as an act causing him physical harm.

13. I have dealt with this matter in giving my reply to Question No. 12. Most people believe the changes made in 1925 have been halting. Reformers in other countries have boldly taken the step forward and it is particularly disappointing to see that stalwarts like Pt. Madan Mohan Malaviya and Diwan Bahadur Rangachariar taking up an absurd and halting attitude in this matter at a time when in political matters they are prepared to take a bold step forward in the interests of the country.

14. As a rule women do not favour early consummation of marriage. It is the motherless girl whose marriage is consummated at an early age. It is only when there is the intense desire for the birth of a male child that the mother consents to premature consummation of marriage in the case of her daughter.

15. I have dealt with this question in my reply to Question No. 11. There is the universal feeling that births must be registered and marriages must be registered and we should not be compelled to depend on medical evidence which has a nasty habit of differing vitally for ascertaining the age of the girl.

16. I certainly think that the margin would be materially reduced if the age of consent is raised say to 16 years. I have for that reason urged the raising of the age for outsiders to 18 and for husband to 14. The woman is generally more or less developed at the age of 14 and certainly fully developed after that. Under this head I am making further enquiries from medical circles and will submit a supplementary reply.

17. I would separate extra-marital and marital offences into different offences. I would leave the question of maximum punishment to legal experts.

18. Section 352 Cr. P. C. leaves the discretion in the hands of the court as to the mode of trial but I would certainly think that all offences within the marital state should be tried in camera. This is the one condition precedent to our getting full evidence on record.

19. Unfortunately I have had no experience of improper prosecution or extortion but I think that if compulsory registration of births is insisted on these difficulties will disappear.

20. As I have already said we as a civilised people should have the terminus fixed for cohabitation by prescribing minimum age for marriage because it is our wish to push this terminus so as to make the age of marriage coeval with the age of consent. Human nature being what it is. It would be impossible to get proper observance of the age of consent if there is a wide margin between the minimum age of marriage and the age of consent. We have to work up public opinion so that a day may come when the marriage age is so well pushed forward that the question of age of consent within the marital state would not be the subject of legislation. I am certain that in the U. P. people are in favour of raising the age of marriage. They resent a law however which would inevitably lead to prying into family secrets.

21. I am a staunch believer of both activities working hand in hand, namely penal law and social propaganda. The very existence of the law is a light-house that would warn the wayfarer what he has to avoid. The social reform propaganda is the pole star towards which the ship of progress is to move. It is for this reason that I think that legislation in a country like India creates public opinion. I know in Baroda legislation about the age of marriage so moulded public opinion that the age of marriage was mechanically raised. Legislation in India has always been considered the prerogative of the King. He is the leader. It is the expression of the opinion of the best minds of the country who are supposed to be behind the Royal legislation and as Gita says "as the best men will act so will the others act." Legislation in the past therefore has not merely overtaken public opinion. It has created public opinion.

Out of the many cases that came to my notice officially I describe the following two :—

- (1) My wife and I were seated in camp in the district of Sultanpur. It is a district full of Thakurs and Brahmans who go abroad and serve in the military police Burma, in the military department or as Darwans.

in private concerns. On an average they come home once in four years. They are generally members of a large middle or lower middle class family and their community boast of few females. They cannot get a bride except after payment of a big sum of money. An old woman came weeping before me that her neice had been taken away by a young Thakur rascal. She gave me the address and I issued a warrant under section 552 for the recovery of this minor girl. The girl was produced with that young Thakur. He was a handsome young fellow aged about 21. After cross-questioning him I came to know the whole truth. The girl's father had died leaving her behind in charge of her step-mother who was scarcely 5 years older than herself. She was then 11 and the widow was 16. She had been left a widow a considerable time ago and she had gone wrong with this young Thakur. The village people had objected to that Thakur's visiting her and she arranged that her step-daughter should marry that Thakur so that during the period her step-daughter was not fit enough to live with him as his wife she should have his company without let or hindrance. The old woman was the Phuphi or aunt of the girl. She had taken Rs. 500 from a Thakur aged about 48. He had come home from service and was in a hurry to marry and consummate the marriage because next time he could get leave to come home was 5 or 6 years hence. The widow had outwitted her and got her married to her paramour. It was a bad case altogether but I certainly preferred the girl marrying the young man of 21 to an old man of 48 who certainly would have left her with all the temptations to lead an immoral life during his life on foreign service and would under ordinary circumstances have afforded her a brief spell of married life. This was a typical case in which consummation would have taken place with an immature girl for reasons which I have already described in my replies to the questionnaire.

The second case is one which is before me just now. A Julaha girl of 11 happened to go to her husband's house on a festival day. It appears that there was no father-in-law or mother-in-law but a Jethani in the house. When night drew near the Jethani insisted on her going to her Dewar's room, that is, the Girl's husband's room. She refused. The Jethani threatened to beat her and called her Dewar and handed her over to him. He dragged her into his room, had sexual intercourse with her, caused wound in her private parts and pain in her body. She was ill-treated the next night and on the third news reaching her mother she was taken back. She made a prompt report to the police station. She was treated in the hospital and the medical report was that she was 11 years old. The Julahas are scarcely different from low caste Hindus in their habits and customs. Presumably this was the case in which no Gauna had taken place of a formal nature. The girl visited her Sasural on a festival occasion and because her husband was 22 years old he could not resist the temptation of cohabiting with her and induced her sister-in-law to help him in his nefarious project. One can draw one inference that as long as the age of marriage is kept low there is this danger that even before Gauna a girl may visit on a festival, her husband's house and in the absence of aged females in the house namely mother-in-law or aunt-in-law she may come in the clutches of her husband if he is fairly grown up and be a victim of an act which has brought about the arrest of her husband and probably has done irreparable injury to her lower abdomen. This danger is specially great in the case of the poor people where there is not sufficient accommodation for separate rooms and beds spread far apart and stolen intercourses are not difficult.



**Oral evidence of Mrs. V. N. MEHTA, Secretary, Women's Rescue Home, Benares, and Mr. V. N. MEHTA, I.C.S., Secretary, United Provinces Government, Lucknow.**

(Lucknow, 21st January 1929.)

*Chairman* : You were at Benares and were instrumental in establishing a widow's Rescue Home ?

*A. (Mrs. Mehta :)* Yes, I started the Rescue Home for girls.

*Q.* How long has it been working ?

*A.* It has been working for the last two years..

*Q.* You are in favour of legislating regarding the age of marriage and the age of consent ?

*A.* Educating public opinion and legislation. I want both.

*Q.* You think that a stage has now arrived after a certain amount of social propaganda has been done when legislation on this subject should be undertaken ?

*A.* Yes, because there are many persons who without legislation will simply ignore social propaganda.

*Q.* You suggest that considering all things 14 should be the age for marital relations ?

*A.* Yes.

*Q.* And 16 should be for outside marriage ?

*A.* Not 16 but 18.

*Q.* What age would you have for marriage ?

*A.* The age of marriage and the age of consent should be the same.

*Q.* That is 14 ?

*A.* Yes.

*Q.* Would you not like to have the age of consent a little higher ?

*A.* I prefer that just to carry public opinion. I have put down 14 as the first step.

*Q.* This is a concession to orthodox public opinion ?

*A.* Yes. For myself I would say it should be nothing less than 16 for marriage. For the backward section I have put it at that.

*Q.* On this point you hoped to give a supplementary statement after consulting medical opinion. Have you been able to do that ?

*A.* They also said the age should be 16 for marriage and for consummation.

*Q.* You fix it at 14 to be raised hereafter ?

*A.* Yes.

*Q.* You have occasion to move among orthodox ladies ?

*A.* Yes.

*Q.* What do you think would be their feeling on this subject ?

*A.* I attended a meeting where I came across a few orthodox ladies and they all said that they would prefer the age of marriage being fixed. Without that there would be an accumulation of poor virgin widows which we don't want.

*Q.* What is their idea about the age of marriage ?

*A.* Between 14 and 15. At that time the girl will be more or less developed.

*Q.* Either at Benares or here do you think there is a certain number of ladies of the orthodox type who would actually marry their girls late but for the social pressure ?

*A.* Yes. They feel they will be lowering themselves socially, if they did not have their girls married at an age earlier than 14.

**Q.** Do you think legislation will help such a class ?

**A.** It will certainly help. They will feel strengthened.

**Mr. Mehta :** I went touring about in Baroda territory and I noticed the repercussions of ladies on account of the fact that there was no age marriage fixed in British India. Such a legislation would not only overtake public opinion but would create public opinion.

**Q.** Have you ever been in the Kamaun district ?

**A.** I have not been to that district.

**Q.** Is Goana a thing which is disappearing ?

**A.** Goana is very common.

**Q.** Supposing pre-puberty marriages were permitted as the orthodox consider them to be essential and Goana was prohibited till the girl was 16, do you think that would be appreciated by the people more ?

**A.** That would not prevent the evil. Human nature is human nature. Supposing a girl has no mother or father and has only an aunt or an uncle they would certainly prefer to send their niece to the husband's house after marriage. If there is a law they can't send her.

**Q.** You think that would assuage orthodox public opinion ?

**A.** If the law is there, they will have to do it. I don't think to allow marriages at any age and then prevent the girl being sent to the father-in-law's house till a certain age would be very practicable.

**Q.** Have you any other method to suggest whereby orthodox public opinion can have the ceremonial of marriage before puberty or at any age they like, but maternity could be effectually postponed till 16 ?

**A.** There should be no difference between the Goana ceremony and the marriage ceremony.

**Q.** You don't think there is any method of effectually postponing consummation and preventing early maternity ?

**A.** I don't think so. Without a marriage law you are setting up a factory for the manufacture of child-widows.

**Q.** Would you like that the age of marriage be fixed at 13 and the age of consent be fixed at 16 ?

**A.** 3 years interval is too much for India.

**Q.** Do you think in a legislation of this kind we ought to take other than physiological considerations into account ?

**A.** If you fix the age at 12 the girl does not realize what she is doing. Physiological considerations should be the paramount considerations.

**Q.** If that is so do you think we can be content with 14 ? Medical opinion says that a girl is not properly formed at 14. If physiological considerations are to be the pre-eminent guide your suggestion will fall short ?

**A.** I would say at present it may be fixed at 14. I would have the ideal but for the fact that we have to make concession for the orthodox people.

**Q.** We have been getting very conflicting statements about the opinion of orthodox ladies. Some say they want early marriage and some say they do not want it. From your experience of all the districts where you have been would you say that that would meet with the wishes of at least 50 per cent. of the orthodox ?

**A.** Yes, I think so.

**Q.** Do you think at present the physiological considerations are present to the mind of any mother or guardian for her own daughter ? Do you think they weigh or something extraneous weighs ?

**A.** I think they do weigh. When you ask a mother why she did not marry her daughter till so late she will say the girl is not 'layak' yet and that covers everything.

Q. The concensus of opinion among them is that puberty is good enough for sending the girl to the husband's house.

A. No. They wait till later. I have come across respectable families where the mother has refused to send the daughter even after puberty.

Q. That must be a rich class family ?

A. It is only among the richer class that this Goana ceremony takes place earlier.

Q. Among what community do you think this evil of child marriage exists ?

A. The Gujrati Vaishyas who have come and settled down in Benares and the Khattries.

Q. Do you think early consummation is also common among these communities ?

A. Among the Vaishyas early consummation takes place. These people are most anxious to get children.

Q. What about the lower classes ?

A. They may marry at an early age ; but Goana takes place only when the girl is fit to do manual work.

Q. Among the Vaishyas the present law of 13 is broken ?

A. Many times broken, but the cases never come to light because they are afraid of exposing their sons and daughters otherwise they will be looked down upon.

Q. What are the reasons which lead them not to bring these cases forth ?

A. They are afraid of bringing them to public notice.

Q. For fear of punishment ?

A. Because of the social ostracism. They will be lowered in the estimation of their own people.

Q. Do you think merely raising the age of consent to 16 without a law of marriage would be effective ?

A. I think there should be legislation for marriage as well as age of consent.

Q. You think penalising marriages upto a certain age is essential ?

A. Otherwise the age of consent divorced from the age of marriage will be merely moonshine. Respectable people will never bring cases to the notice of Government and would spend any amount of money to hush them up.

Q. You seem to have some idea about registration of births and marriages. What is your idea about registration of marriages ?

A. I have come across in Benares cases where girls of backward communities are sold in Punjab side and there is nothing to prove that the girl is married.

Q. You want registration of marriages to prove the factum of marriage ?

A. Yes.

Q. Don't you think amongst us Hindus the fact of marriage is so well-known that it is not difficult to prove that the girl was married.

A. If the girl is married in a distant village it is only the barber who knows.

Q. You want registration of marriage to prove the factum of marriage in cases where the girls are abducted and married somewhere else ?

A. Yes. It will also be useful for knowing the age.

Q. Do you want registration of marriage for the age of consent also ?

A. Yes.

Q. When the girl is 12 the parents may say that the girl is 14. What is the guarantee that the right ages will be given ?

A. We will have a registration of births as well.

Q. You want the register of births kept more accurate and more *pacca* to start with ?

A. Yes.

**Q.** If this is made *pacca*, where is the necessity of a marriage register ?

**A.** Then in that case for the purposes of age it may not be necessary. But I would suggest that the man should also say that the age of the girl is so much at the time of marriage.

**Q.** Supposing he says 16 when it is only 14 ?

**A.** He will be punished, otherwise the man will say, I never said that the age was so much.

**Q.** You know something about village life also. The difficulty is to make these people report. Most of them are illiterate. The marriage will have to be registered by the guardian or the father and he is generally illiterate.

**A.** I will appoint a separate officer who will be in sympathy with this movement and a social reformer also who will go round in the villages and find out whether any marriage is being performed. We should have separate officials like the Christians. After all the Christians are compelled to register marriages, if they can do it why not others ?

**Q.** Only with the clergyman ?

**A.** I was the registering officer when I was Collector at Benares. I had kept a sort of book in which every report was to be made.

**Q.** Who would make the report ?

**A.** The father, if he did not I would prosecute him. The first thing is that compulsory registration of births in municipalities should be universalised or a system like the registration of births of Christians should be universalised.

**Q.** Do you consider that so far as municipalities are concerned birth registration is satisfactory ?

**A.** Yes.

**Q.** In villages ?

**A.** No.

**Q.** Would you like to make the headman of the village responsible for reporting the birth ?

**A.** We have started this panchayat system, the village reconstruction scheme. In every village there is a book where the birth has to be registered. Wherever there was a Statutory panchayat the duty was given to it and we have panchayats in 1,900 villages out of 2,500 villages in the Benares district. We could easily do it wherever there was a panchayat.

**Q.** You just imagine the difficulty of a villager who will have to go a long distance to report. If you locate it near about that would be better.

**A.** We can give to the Mukhia certain forms to be filled in and sent on to the Thana or the Tehsil.

**Q.** You want to compel the people to report to the local Mukhia ?

**A.** Yes. When a Christian can do why not a Hindu.

**Q.** What has the Christian to do ?

**A.** The Christian has to give the report about the factum of marriage. On the Continent of Europe a marriage has got no sanction unless it is registered. Why can't we have the same thing in India ?

**Q.** It would be well-nigh impossible to enact a law that a marriage should be invalid because it is not recorded.

**A.** If you make it easier for a villager he will report.

**Q.** I want you to suggest methods to make it easier ?

**A.** Wherever there are panchayats the Sarpanch can do it.

**Q.** You want to make it compulsory on the parents to furnish the information ? They may do so to the panchayat or the Mukhia.

**A.** Yes.

**Q.** You think that they would be more accessible ?

**A.** Yes. Those reports should be sent over periodically to the Tehsil.

**Q.** Is the Sarpanch a literate man ?

**A.** Yes.

**Mrs. Beadon :** In answer to Question No. 11 you have said you have seen some cases of pre-puberty consummation resulting in injury. Would you mind giving us details of one or two cases ?

**A.** But in the cases that we have met we could not give the definite age because there is no compulsory registration. I have met a case of an abortion taking place in the case of the wife of a well-to-do husband and the cause was that consummation had started very early. The result was that the girl died of phthisis. Among the Gujrati Vaishya community we meet several instances.

**Mrs. Nehru :** Is it possible for women's associations or social reform organizations to take up this work and report cases of breaches of the law ?

**A.** If you start a Youth League or anything of that sort, young men and young women who are interested in social reforms can do this work.

**Q.** Do you think that public opinion is advanced to support such Youth's League or social reform organizations ?

**A.** Yes.

**Q.** Will they be able to get enough information and be able to bring witnesses to prove them ?

**A.** Witnesses there will never be, because the parents or relations will never like to expose them.

**Q.** Then how do you think that this difficulty can be got over ?

**A.** I say that the parents should be severely punished if they get their daughters married earlier than the prescribed age or if they send their daughters below the prescribed age.

**Q.** Suppose this marriage legislation is not passed, then under these conditions would you have this age of consent law or would you reject it at all ?

**A.** The age of consent law should be very essential even then.

**Q.** Can you suggest any means for proving the case ?

**A.** Pregnancy and compulsory registration of births are the only means by which the cases can be proved.

**Q.** If the age of consent is increased to 16, what punishment will you have from 13 to 16 ?

**(Mrs. Mehta) :** I will have the same law but I would add that the parents should be severely punished if they send their daughters before the prescribed age. We will keep fine or imprisonment as punishment. But now the punishment is only for the husband but I strongly urge that the parents too should be punished severely.

**Q.** Will you have both the parents of the boy and girl punished ?

**A.** Both should be punished, but it will depend upon the particular case.

**Q.** Will you punish both the fathers and mothers of the boy and the girl ?

**(Mr. Mehta) :** Yes.

**Mr. Mudaliar :** You suggest that you would separate extra-marital and marital offences into two distinct offences. Do you refer to the nomenclature of those offences or to the punishment or to the procedure ?

**A.** I mean the trial in intra-marital offences should take place in camera and it need not be so in extra-marital offences.

**Q.** With reference to the registration of marriages I understand one reason why you advocate it is that the factum of marriage is disputed in many cases ?

**A.** Yes.

*Q.* What is your second reason for advocating it ?

*A.* The second reason is that we can determine the age at which the marriage has taken place. So the registration of marriages is most essential.

*Q.* But if you have got a good system of registration of births why do you still require the registration of marriages for this purpose ?

*A.* Both the birth register and the marriage register are essential.

*Q.* How would the marriage register be of any help in the age of consent law ?

*A.* In the age of consent law itself, it would not be of any help.

*Q.* Do you suggest in your statement that there ought to be a good deal of time between puberty and consummation of marriage ?

*A.* Yes, because we consider that puberty is nothing. We consider the physiological conditions of the girl as conditions precedent to her being fit to be a mother.

*Q.* That can be considered by parents only. Can you have an absolute rule for it ?

*A.* That is why I am fixing an age for marriage and making it coincident with the age of consent which merely means that we are interfering with the vagaries of parents and making them to conform to the laws of nature.

*Q.* Do you realize that there are some people who believe in religious injunctions that they must marry their girls before puberty ?

*(Mr. Mehu) :* Yes. About 1,400 years ago when the Buddhistic civilization was on its wane, India was invaded by foreigners and at that time it was considered both by Muhammadans and Hindus that as soon the girl was married away no foreigner would touch her and that was one reason why pre-puberty marriages came in. I say from my study of Sanskrit that in India this early marriage came into existence from that time of the foreign invasions owing to the belief that as soon as a girl was married away no foreigner would touch her.

*Q.* What is the age of the Manu Smriti ? When were these texts written ?

*A.* The latest period when these would have been written would be between the 4th and 5th Century A.D.

*Q.* Do you mean to say that these texts were in conflict with the customs of that period ?

*A.* Certainly so.

*Q.* Do you suggest that those texts are the interpolations of those periods ?

*A.* They are conflicting with the customs of those periods. Take for instance the Mussalmans of Gujrat. They marry their girls as early as the Hindus. You won't find any Muslim country outside India where a Mussalman marries his girl before puberty. In Gujrat the Mussalmans think that once they marry their girls, they are safe. This system they are imitating from the Hindus.

*Q.* May I point out to you that this custom is most strong in Southern India ?

*A.* Yes. Here we have had a succession of invasions, otherwise we know very well that this custom of marriage at an early age did not exist in the Vedic times. I would call it a mockery to celebrate the marriage of a girl at the age of 8.

*Q.* Do you admit that there are a number of people who consider that the mockery of marriage must be gone through before the age of 8 years ? It can hardly be called a mockery. Once it is performed they consider it binding on them.

*A.* The marriage has not taken place with the consent of the girl. It is not legal at all because she has not given her consent at all.

*Q.* But don't you know that in Hindu marriages neither the boy nor the girl is the consenting party to the union, but it is the parents who bring about this union ?

*A.* That is true, but as time changes everything must be changed.

*Q.* May I sum up your position as follows ? You want to ignore those who base their objections on religious injunctions. Is that so ?

(Mrs. Mehta) : Yes. Religion must go with time and we shouldn't go with religion.

Q. I thought religion was eternal.

A. We Hindus never thought like that. When we abolished the system of *sati* we did not care for the public opinion. So also in this matter we should ignore the public opinion and legislate.

Mr. M. Yakub : Can you take any drastic step like that now ?

(Mrs. Mehta) : Certainly I would prefer taking a drastic step.

Q. Do you like that the Government should enact a law without taking the opinion of the people of the country ?

A. This is a very serious question for the girls and the Government should take steps.

Q. But do not people think that early marriage is for the benefit of the girl ?

A. I don't think that they maintain it.

(Mr. Mehta) : I have talked with the most orthodox people in Benares and I had a talk with Mahamahopadhyas. Pandit Laxmana Sastri was the protagonist and he ultimately came to us and said " Don't however try to criticise our dearly cherished sentiment that a girl should be married before puberty but we will not have anything to do with consummation of marriage." Then I replied to him " Panditji tell me, are you putting up a factory for the manufacture of widows ? " He said " if it their *bhagya*, they will become widows."

Mr. Mudallar : If you are prepared to ignore that orthodox opinion for the good of the country, then why do you make a compromise and fix it at 14 and why should we not take courage in both hands and fix 16 for marriage ?

(Mrs. Mehta) : I would certainly prefer 16.

(Mr. Mehta) : But if we are going to put 16 for marriage, then we certainly don't have objection to putting 16 for consummation. We are strongly of opinion that we should not allow any time to intervene between marriage and consummation.

Q. But you say that *gaona* is performed. Do you think that it will go into disuse ?

A. Absolutely it will go into disuse, except amongst the lower classes. Otherwise have the marriage age as 14 which will be quite reasonable. But our personal feeling is different.

Q. In what way would 16 for marriage be unreasonable ?

A. Anything beyond 14 would be perfectly welcome but 14 will be reasonable in the sense that it will be practical, otherwise as in Baroda 10,000 people will be fined every year.

Q. Don't you see that that is because of the inherent defect of the Baroda legislation ?

A. But then there would be 5,000 imprisonments.

Q. To what extent do you think that public opinion is prepared for an advance in favour of the marriageable age ?

A. We consulted orthodox people and except those 5 Mahamahopadhyas, every body is in favour of 14.

Q. Are you aware of the conference which was held in Benares some time ago ?

A. Yes. To that conference the majority of the people came from different provinces, but then the whole thing was that they did not want an alien Government to make any legislation and they said that they should not allow an alien Government to meddle with their laws.

(Mrs. Mehta) : It was the opinion of the men and not of women.

Mr. Shah Nawaz : to Mrs. Mehta : Do you think that women from the country side would accept the legislation proposed by you ?

A. I think so, and if they don't accept it, we will try to impress upon them that it is good for them and for their children and so on.

Q. How will you try ?

A. We will start a league and we will educate them.

Mr. Yakub : In case a marriage law is enacted, what punishment would you suggest for the infringement of the marriage law ?

(Mr. Mehta) : We will have imprisonment or fine.

Q. What maximum power should be given to the Magistrate ?

A. I would give him power to give two years punishment. I would either have fine or imprisonment.

(Mrs. Mehta) : Fine will not be effective.

Q. Who should be the accused in these cases ?

A. The mother and the mother-in-law as well.

Q. Should you give them the same punishment also ?

A. Yes.

Q. Would you consider a marriage invalid if it is celebrated below a prescribed age ?

A. If the girl is below 14 and if she is sent before that age, I will consider it as invalid.

Q. Whom would you give the right of complaint ?

(Mr. Mehta) : I think every offence should be made cognizable. Of course I don't think that the police will go and report every case even then.

Q. Are you satisfied with the trial of these cases by ordinary courts or do you want a special court to try these cases ?

(Mrs. Mehta) : I say there should be a special court where there should be a majority of women to try these cases, one Stipendiary Magistrate and two co-judge and these should be women.

Q. Will they be available in every place ?

A. They will be available in every place. In questions relating to women men should not interfere.

Q. Would you like to have women detectives ?

A. Yes.

Q. As regards the law of the age of consent, it was suggested by a witness that if ladies were appointed as detective police, they will be more helpful and will bring many cases to light. Do you approve of this suggestion ?

A. Yes.

Q. Do you think that in villages too women will be available to do this sort of work ?

A. Yes.

Mr. Kanhaiya Lal : You have considerable experience of the Baroda Legislation. Do you think that it is effective ?

(Mr. Mehta) : I think it has a wonderful effect in the Baroda territory where in several villages and other places people used to marry their girls when they were one year or 8 months old. Now on account of the legislation this custom is disappearing.

Q. What court would you recommend for the trial of cases of contravention of the marriage law ?

A. I think ordinary courts will do.

Q. Would you give this power to the village panchayats ?

A. I would allow the village panchayats to report these cases.



**Q.** A suggestion has been made that marital offences should be made compoundable in suitable cases with the permission of the magistrate in order that good relations might be restored between the husband and wife, lest the girl's life may be ruined? Would you favour this proposal?

**A.** We have no objection if it is done with the permission of the Magistrate.

**Written Statement dated the 12th August 1928, of Mr. SAJJAD ALI KHAN, M.L.C., Talukdar of Behta and Dhorara, Lucknow.**

1. Yes. There is some dissatisfaction with the present law as contained in Sections 375 and 376, I. P. C.

2. Making an advance on the present law would be a better check to the various offences under those sections.

3. The crimes of seduction and rape are frequent in U. P. The amendment of the law made in 1925 raising the age of consent to 14 years has succeeded in reducing cases of rape or the improper seduction of girls outside the marital state.

4. It has proved effective.

5. The girls in our part of the country attain puberty generally at the age of 14 years. Girls of extra-ordinary health attain puberty some times earlier than 14 years. Much depends upon the nourishment the girls receive.

6. Cohabitation is common before puberty or soon after it some times before the girl completes 13 years. Very few of such cases come to court.

7. There is generally no definite point in it as to religious injunction.

8. The *gaona* or *garbhadan* ceremony is common in the Hindu community only and it is now generally performed after the attainment of puberty within a year or within 3 years after marriage.

9. It is a sufficient indication of physical maturity.

10. Generally after 14 years of age.

11. No information.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality.

13. There has been some activity on the part of social reformers towards the age of consent after the amendment of the law in 1925.

14. No.

15. Some difficulties are experienced in determining the age of girls in connection with the offences under Sections 375 and 376, I. P. C. Horoscopes, register of births and medical examinations are the effective means to minimise these difficulties.

16. Yes.

17. Section 376A would be desirable as proposed towards the separation of extra-marital and marital offences.

18. There should be no difference in the procedure.

19. The raising of the age of consent would be a very effective safeguard against the protection of the offences.

20. Penal legislation fixing a higher age of consent would be more effective.

21. The strengthening of the penal law is preferred to the progress of social reform by means of education and social propaganda.

Oral evidence of Nawab SAJJAD ALI KHAN, Talukdar of Bheta and Dhorara, Lucknow.

(Lucknow, 21st January 1929.)

Chairman : Are you a member of the Legislative Council here ?

A. Yes.

Q. How long have you been connected with this Council ?

A. I was a member in the first Reform Council for three years. Now I have been nominated by the Government.

Q. In connection with these two questions do you know the conditions in the villages regarding the Muhammadans ?

A. In my Estate almost all my tenants are Hindus and so I have no knowledge of the Muhammadans.

Q. You say in your answer to Q. No. 6 that cohabitation is common before puberty or soon after puberty or some time before the girl completes 13 years. Is this from your experience in your Estate ?

A. It is not in my own Estate. I have read these things in the newspapers and I formed my judgment.

Q. Are such cases common in your Estate ?

A. No.

Q. Do you believe that in that Estate among the Hindu tenants about whom you know, there is early marriage before 12 ?

A. Yes.

Q. When do they have *gaona* ?

A. After two or three years of the marriage.

Q. Has *gaona* anything to do with puberty at all or is it done independently of puberty ?

A. So far as I know, it is always done when the girl attains puberty.

Q. What is the age when girls go to their husbands.

A. At 13 or 14.

Q. Then I suppose when the girls go to their husbands house, consummation takes place ?

A. Yes.

Q. Have you any reason to think that consummation takes place amongst certain classes of your tenants below 13 ?

A. Such cases have not come to my notice but I think when the *gaona* takes place, the wife goes to her husband's house, and consummation probably takes place.

Q. Do you think that early maternity below 14 is bad for the mother and the child ?

A. Certainly it is an evil.

Q. Do you belong to the Shia community ?

A. Yes.

Q. Please refer to our Q. No. 20. Now which of the two would you prefer ?

A. I think the minimum age for marriage should be 14 and the maximum age should be 16, i.e., the minimum age at which marriages should be penalized should be 14 to 16.

Q. What age would you recommend for boys ?

A. 18 to 21.

Q. What would you recommend for the age of consent ?

A. 16, because a woman cannot give her willing consent before 16.

Q. What age would you recommend for outside marriage ?

A. 16.

Q. Do you think that early maternity is one of the causes that leads to infant mortality and mother mortality ?

A. Yes.

Q. Is that your experience ?

A. Yes.

Q. Amongst the tenantry that you have, is it considered necessary that pre-puberty marriage must be made or they can do so after puberty too ?

A. There is no injunction that there should be only pre-puberty marriage. I mean the ignorant classes always favour early marriage.

Q. What class of tenants have you got ?

A. We have got Aihirs, Chamars and Thakurs also. They all think that early marriage is favourable to them.

Q. From what age up to what age early marriages take place amongst these people ?

A. Marriages take place amongst these people from 8 to 11.

Mrs. Beadon : Have you met any cases in which serious injury has resulted to the mother or to the child as a result of cohabitation ?

A. No.

Mrs. Nehru : In answer to Q. No. 3 you say that there is a great number of seduction and rape cases taking place. Do they take place also in your Zamindary ?

A. No.

Q. Have you any personal knowledge of such cases ?

A. In reply to this question of the President I said to him that what I read in the newspapers I have stated in the statement. I have got no other actual experience.

Q. What is your reason to say that the 1925 amendment has reduced rape and seduction cases ?

A. That is only my impression.

Q. Do you find the present registration of births and deaths working satisfactorily ?

A. Yes.

Q. You have said that you want to separate extra-marital and intra-marital offences, but at the same time you want no change in the procedure. Then is it only the name that you want to change ?

A. I don't want a change in the procedure or in the name but I want a change in the punishment.

Q. What change do you want in the punishment ?

A. The husband should be punished for two years while the stranger should be punished for ten years.

Mr. Mitra : Are you for or against a marriage law ?

A. I am for a marriage law.

Q. Don't you think that there will be much objection from Muhammadans for enactment of any marriage law ?

A. No, they won't oppose it, because they marry later and because the educated classes always realize the danger of early marriage.

Q. Do not the lower classes realize that ?

A. They don't realize the evil effects of early marriage because they are ignorant

Q. Is it a fact that even amongst the Hindus there are no pre-puberty consummations ?

A. Yes, it is a fact.

Q. Do you suggest both fine and imprisonment for infringement of the marriage law ?

A. I suggest imprisonment.

Q. Do you want to imprison both the parents of the bride and bridegroom ?

A. The mother is not responsible for this and the women are weak. Therefore they shouldn't be taken into account.

Q. If the age of consent is raised to 18 for extra-marital offences, will you have any objection to that ?

A. No.

Mr. Shah Nawaz : Are you of opinion that fixing the minimum age of marriage at 14, will be generally acceptable to the Mussalmans ?

A. Yes.

Q. Do you think that it does not interfere in any way with the Muhammadan law ?

A. No.

Q. Will it not arouse the religious susceptibilities of the Mussalmans ?

A. No.

Q. What is the opinion of the women in your *illuqa* ?

A. I have said that those who are educated don't favour early marriages while the ignorant classes favour early marriages.

Q. Do the majority of women favour early marriages because they are more ignorant than the educated ? Will they be inclined to accept if the legislation is passed ?

A. If the masses are educated, they would realize the evil effects of these things and then they will accept it.

Q. Don't you think that compulsory education for boys and girls will achieve our object ?

A. Yes.

Q. Are you for compulsory education both for boys and girls ?

A. Yes.

Q. Do you think that the expenses wouldn't be prohibitive ?

A. I think this question is for the Government to answer.

Q. Do you think that it is the duty of the Government to educate the boys and girls ?

A. It is the duty of the Government to educate the boys and girls and the Government is solvent now-a-days.

Q. What propaganda are you going to make in your *illuqa* to raise the age of consent ?

A. I would try to tell them that it is better that they shouldn't marry their children earlier than 12.

Q. Don't you think that a Talukdar of your position and a gentleman of your learning and piety, should encourage people not to resort to early marriage and early consummation ?

A. Yes, I will do it.

Q. Do you think that this age of consent law is known to the people ?

A. No.

Q. What measures would you suggest for making this law known to them ?

A. If the law penalizes persons they will know it.

Q. Even now the present law penalises offenders ?

A. Spread of education is the only way to make them know about these things. The Government should ask the patwaries and the chowkidars to make this law known to the people. Even the patwaries and the chowkidars cannot understand the true nature of this law and then how would they follow it ? I say that people didn't like in the first instance the abolition of *ati* but then afterwards they kept quiet. In that way if the laws are passed and prescribe punishment they will follow the laws.

Q. Do you want the Government to do propaganda work ?

A. I want the Government as well as the people to take to propaganda work.

Q. Will you make these marital offences cognizable ?

A. No. I don't want the police interference.

Q. Are there many cases of rape and seduction in this part of the country ?

A. So far as I have been reading the newspapers there are cases of that nature.

Q. Do you know that the factum of marriage is also disputed in these cases ?

A. I am not a lawyer and so I don't know anything about this matter.

Mr. Yakub : Do you know that there are certain *Hadis* in which it is stated that the puberty of a girl should not begin at her father's house ?

A. No. There may be *Hadis* but there is no Quranic injunction to this effect.

Q. Is the whole muslim law confined to Quran alone ?

A. There are *Hadis* and *Fiqh* also.

Q. Do you say that all the injunctions are in the Quran ?

A. They say that everything is given in Quran, but I am a lay man and I don't know much about it.

Q. When you say that this law will not be an interference with the Muhammadan religion, what is your authority for saying this ?

A. I don't know any law which prohibits such a legislation.

Q. According to the Muhammadan law, don't you know that the father and the grand father also have a right to give their daughters in marriage as *Vali* ?

A. Yes.

Q. If you enact a law fixing an age for marriage, do you not deprive the liberty that is given by the Muhammadan law to the father and grand father to give their daughters in marriage as *Vali* ?

A. I would be glad to deprive them of this liberty if it is injurious to the health of the girl or some such thing, although it may be against Muhammadan law. Now the time is changed and we should do what the time needs and requires.

Q. Have you consulted any Muftis about this question ? Would you like to act against the wishes of these Muftis in this matter ?

A. Some times I must.

Q. What is the general age of marriage amongst the Mussalman girls in Lucknow ?

A. 13 to 15.

Q. When you say that generally consummations take place soon after puberty what is your authority for making this allegation ?

A. As I said in answer to the Chairman's question, if a girl is married and if she goes to her husband's house I think that consummation must take place.

Q. Would you presume that without having any personal knowledge ?

A. I say that it must take place. What is there to presume in this. When a girl is married and when she is sent to her husband's house naturally consummation would take place.

Q. May I know at what age your girls are married ?

A. 14 to 15.

**Mr. Kanhaiya Lal :** Supposing we have a law fixing an age for marriage and a law fixing an age for consummation, would you recommend a system of registration of marriages giving the names and ages of the marrying parties to a prescribed authority to facilitate detection of breaches of the marriage law or consummation law ?

A. Yes. I say that the registration of marriages is very important.

Q. On whom would you place the obligation of maintaining these registers ?

A. I would advocate the opening of a separate department for the purpose.

Q. Would you recommend that a fee of one rupee might be charged from the reporting individual ?

A. Yes ; that can be done.

Q. Would that not be considered a hardship on the poor ?

A. Marriages take place in these houses only once in four or five years, and paying one rupee at the time will not be heavy.

Q. On whom would you place the obligation of reporting the marriages ? Would you place it on the parents and guardians, as well as the Priests and Mullahs ? The Priests and Mullahs will say that they do not know the ages of the parties ?

A. You can make it compulsory on the parents and guardians to report, but optional on the part of the Mullahs and Priests.

Q. Would you advocate separate matrimonial courts consisting of a magistrate and two non-officials to try these marital cases ? Will they inspire better public confidence ?

A. But then there will be the question of funds.

Q. The two non-officials will be honorary.

A. Then there will be no difficulty.

Q. Would you have these non-officials as assessors, jurors or as co-judges ?

A. I would have them as co-judges taking part in the assessment of the guilt and the sentence. I think it will be better if one of these two non-officials is a woman.

Q. Would you allow these marital cases to be compounded so that good relations might be reintroduced between the husband and the wife.

A. Yes ; such cases might be allowed to be compounded at the discretion of the Magistrate.

### Written Statement of Mr. MUKANDI LAL, B.A. (Oxon.), Barrister-at-Law, M.L.C., Deputy President, United Provinces Council.

1. Yes, there is dissatisfaction with the enforcing of these sections in U. P.

2. (1) I cannot justify the retaining of the present age of consent limit on any ground.

(2) The advance of the present laws ought to be made *for the sake of the health and physique* of our girls if nothing else. Early cohabitation in well-to-do-families, whose women lead idle life invariably makes young wives victims of hysteria. Their growth stops after cohabitation commences. They are denied the opportunity of higher education. As a race we are growing shorter and shorter in stature due to stoppage of growth of our women. Physical deterioration of Hindus particularly, as a race is chiefly due to low age of consent and early marriages.

3. Cases of seduction among the people are not particularly high in my district (Garhwal). Hardly ever a case comes before the law courts. In my experience as a lawyer in Garhwal courts since 1919 I have come across only two cases of rape. Only in one of them the accused was convicted. In another case it was not proved to be a case of rape and in fact it was not but it was held that of adultery. In

the rape case the accused was a Mussalman Eka-driver, who absconded when being taken to Bareilly Jail to serve 4 years sentence. The raising of age to 14 has not effected any change.

Garhwal is a hill district and is the least criminal district in U. P. Seduction of young girls of the Naik community for prostitution from Kumaon is very common. Every year from 40 to 50 girls under the age of 19 are seduced in the Kumaon division. And not one of these culprits is ever brought to book.

The greatest difficulty is the question of the determination and proof of age. It is almost impossible to prove that the age of a particular girl is under 14 or 16. I have met with this difficulty while appearing in cases under 375, 376 and 366 and 366A. Evidence of doctors never helps. X-ray examination alone can give exact approximate age of persons below 16. Courts should send girls for X-ray examination instead of to ordinary doctors. For future, registration of births must be made compulsory; and birth and death registers must be preserved in district offices for 100 years or at least for 60 years. At present neither the births are registered compulsorily nor are the birth registers preserved.

In my opinion husbands commit so many rapes on their wives with impunity. Hardly ever a husband is prosecuted. And husbands are not prosecuted because it is difficult to discover raped wives; and it is more difficult to prove their age. So ultimately it comes to this that correct record of age must be preserved and marriageable age of girls must be raised and rapes by husbands will automatically stop. As to seductions and rapes by other than husbands it all depends on the detection of the crime and the proof of age. But so far as the seduction of girls in brothels or in the keeping of prostitutes is concerned it is easy to prosecute them yet the connection being promiscuous it is difficult to prosecute any particular individual. Besides every case would be technically case of consent, unless age was proved to be below the statutory age.

4. The answer to this question is partly given in answer to No. 3. (1) consummation is not postponed by husbands by fear of law. Circumstances do help in it sometimes. Husbands cohabiting with wives of 10 to 13 are not uncommon. (2) It is not the public opinion that will help in this, but artificial or legal barriers will do.

(3) Yes, that is the only solution but provided you ascertain the age of the girl wife or bride. A bride of 10 might be passed for one of 14. So burden of proving age over 14 at any statutory age must be on the husband.

5. The puberty appears earlier among poorer classes, which is due to poor diet and insufficiency of food. And average age may safely be put down to 15 years. My impression is that with the spread of education among girls the age of puberty is rising. It is common now to notice that girls in cultured families, who are at school do not show signs of puberty even at 16 years. Therefore I am inclined to put the average and normal age of puberty now at 16.

Even among poorer classes if the girls are not married early the puberty would appear later. In the hills in cold climate it appears later. But since girls are seldom left unmarried after 13 or 15 one might as well say that at 14 puberty appears.

6. No cases come to court for prosecution for cohabitation before 13. But if the police or any private individual were competent to launch prosecutions many persons could be prosecuted, but the conviction would be so difficult for want of proof of age.

(1) Cohabitation before puberty in Garhwal is very rare.

(2) It is rare before 13.

(3) It is common soon after puberty among married girls.

7. Among high caste Brahmins it does exist due to religious injunction. But the real thing to me appears this that due to the peculiar social organisation of our society it devolves on parents to secure a suitable bridegroom for the girl therefore they start the bridegroom-hunting expedition early and give girls in

marriage even when they are 10 or 12, because they are afraid they may not get a suitable bridegroom later.

The injunction of Manu can be given any interpretation one pleases. However there is no religious or social penalty, except that if any one's girl remains unmarried at parent's house the people think that there is some blot on the caste that is why the girl is not married. So ultimately it comes to public opinion. Religion has imposed no penalty.

8. *Gaona* is performed soon after if the girl has attained puberty otherwise it is generally delayed until that period, and helps in postponing consummation. Before *gaona* there is hardly any case. Even the low caste Hindus perform that ceremony even if it be the day after marriage. *Garbadhan* ceremony is common only among high caste people; and takes place soon after the certainty of conception and not before. The literal meaning of *Garbadhan* is conception.

9. Appearance of signs of or attainment of puberty is no indication of physical maturity to justify consummation. The attainment of puberty is a physical appearance of a womanly development. It does not indicate physical fitness to be mother or to bear consummation. In my opinion at least two years must pass after puberty before consummation is sought. I would put it to between 3 and 4 years after the attainment of puberty.

10. At 18.

11. I cannot give specific cases. But I can make almost a sweeping and general remark that 90 per cent. of our women are physical wrecks at the age at which European women would be pictures of health. Besides in stature they are short; physically weak, and old looking, because of early marriage and early consummation of marriage.

12. The answer to first part is in the affirmative; the answer to the second parts that it affects both intellectual and physical development of our people.

13. There is general advance in the public opinion for the raising of age. Circumstances also are raising it; for instance the education of girls of higher classes is automatically raising the age of marriage. But so far as the masses are concerned they have hardly changed.

14. Women favour early marriage of their children and do not disfavour early consummation. The women are anxious to see and nurse grand-children as early as possible.

15. I have answered this question already in answering question No. 3.

16. No. If the age is raised to 18 then you may be able to prosecute those under 14.

17. No. I would not differentiate. A husband should be punished for the same offence just as the non-husband and the maximum punishment two years would do. The present high punishment has not improved the situation.

18. No.

20. Fixing of higher age of consent will not help until marriageable age is altered. Public opinion welcomes both.

21. I would have law to enforce the public opinion and the ideas of social progress. Our social reform movement has not made appreciable and adequate advance because the legislature has not helped the social reformer.

I will give a concrete instance. Just as in the U. P. amongst Kayasthas and in Bengal among Kulins bridegroom's people take a dowry or price for the groom from bride's people, so in my district (Garhwal U. P.) 95 per cent. people take money from bridegroom's people for the girl given in marriage. Every man educated for uneducated condemns it. Some castes have passed resolutions condemning it. Since the advance of public opinion against this practical sale of girls the "Price" of brides have increased ten times. And Government will not help to stop this sale of girls in marriage market. If a law were made all would welcome it and bow to it.



**Oral evidence of Mr. MUKANDI LAL, Deputy President, United Provinces Legislative Council, Lucknow.**

*Chairman* : Are you the Deputy President of the local Legislative Council ?

A. Yes.

Q. Is it a paid office ?

A. Yes ; it is by election and I am not considered an official, and am free to practice as a lawyer.

Q. In para. 14 there is a sentence "in fact they (women) play the part of seducers in a way." Would you be willing to cut that out ?

A. Yes.

Q. In your opinion is the District of Garhwal the least criminal district ?

A. Yes.

Q. In what districts of the Kumaon division do these 40 to 50 cases of seduction of Naik girls take place ?

A. There are about 45 villages of Naiks in the Almorah district, 5 in Garhwal and 10 in Naini Tal, and 40 to 50 girls every year are decoyed from these villages.

Q. How is it that you say that not one case is traced ?

A. The Naiks consider it their legitimate profession. They think they are born for this profession.

Q. Do they practically connive at their girls' running away ?

A. There is no question of connivance. It is their source of living. Amongst the Naiks the inheritance is through the girls ; and girls are the supporters of the family as it were.

Q. Do they dedicate their girls as in some parts of India ?

A. There are 3 villages in the Garhwal district near Kedarnath where they dedicate their girls to temples, but the custom is now practically obsolete.

Q. Do these cases of seduction occur with the connivance of the elders ?

A. They send them to brothels, and they make money out of the girls' earnings. Their men bring wives from other communities, but they send their own girls to the brothels.

Q. You say that in Garhwal 95 per cent. of the people take money from bridegroom's people when they give their girls in marriage. Is it because girls are few amongst them ?

A. The population of males and females is practically equal. But a custom has grown that one pays money for his daughter-in-law and he takes for his daughter.

Q. Supposing some body goes to these people with the pretence of marrying the girls and offers 200 or 300 rupees, will they give their girls ?

A. Generally not. But there are some families living not far from Hardwar from where Bhatias of Bombay and the Punjabis get girls by paying money. But these things are done quietly, because those who sell their girls in this manner are looked down upon.

Q. Which castes do it ?

A. Generally Kshatriyas. The Naiks are also a sub-section of Kshatriyas. There are some who have become procurers and sell other peoples women.

Q. Are you for fixing an age for marriage ?

A. Yes ; I would have it at 18. I would have the age of consent for marital and extra-marital cases also at 18.

Q. What age would you have for boys ?

A. 21.

Q. Would you have 18 as the age of consent outside marital cases also ?

A. Yes.

*Q.* Is it not like the proverb "*Taka ser Bhaji, Taka ser Khaja*" (me equal treatment for all).

*A.* I put it at 18 both on physiological as well as moral grounds, therefore I do not wish to reduce it even in case of husband.

*Q.* Do you think that the girl will not be fit till 18 ?

*A.* No. I do not think she would be physically and mentally fit before 18 years.

*Q.* In Kumaon division are there classes of people who marry early ?

*A.* Yes ; generally high class Brahmins, particularly in Almorah and Naini Tal they marry their girls between 6 and 12.

*Q.* In the other classes ?

*A.* In the other poor classes also there are cases of early marriages, but late marriages, between 13 and 15 take place amongst the Kshatriyas, which form three quarters of the population of Kumaon division.

*Q.* Do you think that in about 90 per cent. cases it takes place before 12 ?

*A.* I would say in 40 cases out of hundred.

*Q.* In these cases in which there are early marriages, is any period allowed for *Gaona* ?

*A.* Yes ; but *Gaona* is common amongst the higher classes only.

*Q.* Has the ceremony anything to do with puberty ?

*A.* *Gaona* is not postponed mainly for that reason. It is a sort of religious custom, and it is part of marriage.

*Q.* I heard that there is a *Thauna* ceremony observed here which is really the consummation ceremony. Do you know it ?

*A.* I do not know anything about it.

*Q.* Is there *Gaona* ceremony amongst the Kshatriyas ?

*A.* Yes.

*Q.* When does maternity take place amongst these people who have early marriages ? For instance, have you seen girls becoming mothers at 13 ?

*A.* I have heard that there have been some cases, but I have no personal knowledge of any.

*Q.* Girls becoming mothers at 14 or 15 ?

*A.* So far as Kumaon division is concerned there are very few girls who are mothers below 15.

*Q.* Do you think then that motherhood is generally at or after 15 ?

*A.* Yes.

*Q.* Have you heard of girl mothers suffering on account of early maternity ?

*A.* Yes ; one very common disease in the higher classes is hysteria. It is so common that you can hardly pick up a young wife who has not got hysteria. I think it is due to early consummation and early maternity, and want of outdoor life.

*Q.* We have been told that hysteria disappears after pregnancy.

*A.* I have known even mothers of children 8 or 9 years old getting fits of hysteria. I put it to early consummation and want of proper exercise—out-door life.

*Q.* Are there cases of consumption amongst very young girls ?

*A.* They are frequent. It is the victims of early consummation who particularly get hysteria.

*Q.* Do you know of any instances in which the girls have suffered from consumption ?

*A.* I know of an engineer friend of mine. His three wives died of consumption between 15 and 20.

*Q.* Were they consummated at 15 ?

*A.* Yes ; at about that age.

*Dr. Beadon :* In these cases had any of the girls children ?

*A.* No.

*Mrs. Nehru :* Were you a member of the Sub-Committee which was appointed to investigate into the conditions of these Naik girls and suggest legislation to reform them ?

*A.* Yes ; I had much to do with it. We expect a bill will be submitted by the Government to the Council at its next session. The original resolution was generally to stop traffic in girls. Government said that they could not legislate for all classes, but would be prepared to consider the case of that classes in which there was this custom of allowing girls for purposes of prostitution.

*Q.* Was this sub-committee appointed to investigate into the conditions of these girls only ?

*A.* When the resolution was being discussed in the Council I pointed out there were some other classes besides the Naiks who were now going in for prostitution, and that there was traffic in women in Kumaon but the Government confined investigation to this class only.

*Q.* Have you come to any conclusion about the subject ?

*A.* We have drafted a bill, and that will be placed before the Council shortly.

*Q.* Is this practice of allowing girls to go in for prostitution common amongst the Naik community ?

*A.* Yes ; invariably.

*Q.* Do you think the raising of the age of consent in extra-marital cases will help those girls ?

*A.* Yes. Even if this legislation is not passed, the bill which we have drafted will help us ; we thereby penalise the sending to or keeping of girls in brothels before 18.

*Q.* Are these girls sold ?

*A.* Yes ; they are mostly to be found at Agra, Meerut, Bareilly, and Delhi. They are brought to these places. Unfortunately, other people, such as Doms and Mirasis of Kumaon are taking to the profession now. And when Naik Reform Act is passed the new class will take their place.

*Q.* You say that there is a great deal of dissatisfaction with the enforcement of these sections in U. P. What do you mean ?

*A.* The police do not enforce these sections ; and the law is practically a dead letter. So far as offences by the husband are concerned, I have not known of a single case being brought to light.

*Q.* How is the police to know of such cases ?

*A.* I want the offences to be made cognizable.

*Q.* Even now cases below 12 are cognizable.

*A.* Even if the age is fixed at 18 I want that the offence should be made cognizable. Or it should be competent to any individual to file a complaint and launch a prosecution.

*Q.* Even now the right of complaint is with the public.

*A.* But people do not take advantage of it.

*Q.* What are then your suggestions for the alteration in the law ?

*A.* There should be instructions issued to the police to detect such offences.

*Q.* Do you not think there are inherent difficulties in the way of the police ?

*A.* Even now the police very well knows that these offences do occur.

*Q.* Do you mean to say that the police should take such steps as they do in detecting cases of sedition ? Are they not hated by the people for their activities

in detecting political offences. Do you think that the police should interfere to that extent in the case of these offences also ?

A. I think people will like it when they come to realise the importance of the matter. I am looking at it from the national point of view. Therefore I say that the police should try to find out when a boy or girl is born and ask the parents or guardians to report births and marriages. At present the law about the registration of births and deaths is practically a dead letter. The police should be asked to get all births and marriages registered. That is the only way by which we can find out exact age and the date of marriage.

Q. You yourself say that hardly any offence come to court. Then do you not think that the age difficulty is only a secondary difficulty ? We have first to get over the difficulty of bringing the cases to light.

A. The police ought to try and find out where the offences have been committed as they do now in the case of political offences. Of course I realise that it will be unpopular to some extent. When police has detected cases then comes the question of determination of age.

Q. Do you think the objection will only be sentimental. Do you think that the police as it is now can be entrusted with this power.

A. I would risk that harassment and unpopularity. I think that would put a stop to this evil.

Q. Do you know how long are these birth registers kept at present ?

A. They are not preserved under any regulation or law. If any happen to be preserved they do by chance as it were.

Q. Is there any rule for preserving these books ?

A. No ; as soon as a book is complete it is sent to the Patwari. You can hardly ever obtain a book of 10 or 20 years ago from the district records office.

Q. You say that cohabitation between 10 and 13 is not uncommon. Are you talking of the Kumaon division ?

A. I think it is common in the whole of U. P.

Q. Is it only amongst the lower classes ?

A. I think it is found amongst the well-to-do classes also.

Q. Is it common amongst all classes ?

A. Yes ; wherever marriages take place at an early age.

Q. Amongst what classes does early consummation like that take place ?

A. It takes place amongst all communities except the Kashmiris, and educated people.

Q. Has *garbadhan* ceremony anything to do with consummation of marriage ?

A. The ceremony takes place when there is certainty of conception. It has nothing to do with consummation of marriage.

Q. Does it take place at the time of consummation, or does consummation take place earlier ?

A. *Gurbadhan* ceremony takes place long after consummation when conception takes place. It is common amongst the Brahmans in Almora.

Mr. Mitra : What is the percentage of the population of the males and females in the Kumaon division ?

A. It is half and half.

Q. You say that 95 per cent. of the people take money for their girls. What is that due to ?

A. It is a custom ; and I think it is more or less based on economic grounds.

Q. Is that custom dying ?

A. Unfortunately the price of the girls has gone up since the reformation movement began in our parts of the country.

**Q.** Do you think that if the marriage age is raised it will have effect either way.

**A.** Yes; certainly. When the girl is married at an advanced age she will have a voice too in her marriage. Postponement of her marriage will give her opportunity of educating herself and education will naturally help her.

**Q.** Is there Purdah amongst the women in the Kumaon division?

**A.** We have no purdah in the Kumaon division.

**Q.** Is the condition same in Kangra?

**A.** In Kangra there are some people who observe purdah.

**Q.** Is there sale of girls in Kumaon?

**A.** There are two kinds of sales. One is customary bride's price, and the other is traffic in women. The latter is practically a sort of white slave traffic where people sell women for money. They mostly sell other people's women.

**Q.** In fact dowry and selling girls are contradictory?

**A.** Yes.

**Q.** Do you think that if the marriage age is raised the Brahmins will have no objection?

**A.** So far as the U. P. is concerned there will be absolutely no trouble.

**Q.** What is the punishment you would have for the infringement of the marriage law?

**A.** I think you can have 6 months imprisonment as a maximum. This will touch people to whom imprisonment is a horror. There should be imprisonment as well as fine. Fine alone will not do.

**Mr. Mudaliar:** Has your Legislative Council ever discussed the question of the age of marriage or the age of consent?

**A.** I do not think there was any such discussion. But notice of such resolutions has been given though they were not taken up due to want of time.

**Q.** Supposing a legislation is brought forward before the Legislative Council fixing the age of marriage at 15, 16 or 18, what do you think are the prospects of the legislation?

**A.** I think it will be passed. It will be welcomed by the Muhammadan community and I think the Hindus also would welcome it. There is likely to be more unanimity for the age limit being 15 or 16 rather than 18.

**Q.** What age do you think they will accept?

**A.** They would accept 16.

**Q.** Would you consider the desirability of bringing up a resolution of that kind before the Legislative Council shortly?

**A.** I gave notice of such a resolution last year, but I was not successful in the ballot.

**Q.** Do you not know that if a number of people give notice of the resolution, the resolution has every chance of being successful in the ballot?

**A.** The question has come before the public mind only recently. I think there will be one such resolution in the Council very soon.

**Q.** If you could get a resolution passed in your Council it would strengthen other's hands.

**A.** Yes.

**Q.** You suggest 18 for marital cases. Is it on the basis of medical opinion that you have suggested 18?

**A.** I have not consulted any doctor particularly, but I have based it only on my knowledge of medical jurisprudence. I have based my conclusions on the physical development of human beings.

**Q.** Supposing medical men say that 16 would be a safe age, would you even then fix 18?

A. My ideal would be 18, but as a compromise I might accept 16.

Q. Even in western countries do you not know that the age is much lower than 18?

A. I know that it has been said that there have been heaps of cases where in Europe marriages have taken place before 18, and consummation has taken place before 13. In his *Revolt of Youth* Justice Lindsay's book he has said that there have been many cases of consummation at 13, but we should recognise that such cases are the exceptions and not the rule.

Q. In England the law does not fix it as high as 18, but really marriages do take place much above 18 merely because the practice there is quite different. Before the boy and the girl get married there is a long period of courtship. The age of marriage there is high not because the age fixed is high but because there are other considerations.

A. In my opinion if there had been no age limit there would have been many more cases of early consummation than there are at present.

Q. From what point of view do you fix 18?

A. (1) One is the physical reason. I am quite sure that no human being can reach full development of the body before 18; and unless the mother is fully developed in her body she cannot produce healthy children. I think that the very high infantile mortality in our country is due to early marriages. (2) Secondly if a girl is married early it stops her higher education and mental development. Her whole mind is concentrated in her family affairs. (3) From the social point of view, if a girl is married early, it does not give her an opportunity to have any say in the matter of her marriage. If a girl is married at mature age she will be able to give consent or withhold it regarding her marriage. She will have more strength of character and would be more fit to discriminate between a bad bridegroom and a good one. Raising of age would help intercaste marriages, of which I am an advocate; and it will help us in intercaste dining also. (4) From a national point of view, I think that unless we raise the age of consent and marriage of girls to 18, unless we have fully grown up mothers and healthy children, it will take us many years before we uplift our people or attain political freedom. (5) My fifth reason is a humanitarian one, and that is that we will have fewer widows amongst us than we have at present, if we raise the age of marriage to 18 years.

Q. Leaving the physical reasons to medical experience, do not your other four reasons mean that you want to bring about a violent revolution in the existing state of Hindu society?

A. I think this reformation is overdue and the society is prepared for it. There may be some opposition to it but I do not think it will cause any revolution or revolutionise the society.

Q. One of the fundamental institutions of marriage in this country so far has been the choice of the bridegroom and the bride, not by themselves, but by others for them. Your proposal means that it should no longer be so, and it should be according to the Western ideal where the boy and the girl select their own partners.

A. In course of time that practice is bound to prevail.

Q. Is that not a violent change?

A. I do not think so.

Q. Does it not involve the giving up of the purdah?

A. Yes: it does and should.

Q. It involves universal high education which is not common here. It involves a free intermixture of the sexes which is not common here. Is not all this a violent change?

A. I do not think so. Even if it is a violent change it is a necessary change and raising of age is necessary to bring about that change.

Q. Have you been a social reformer?

A. I am one in my own humble way.

Q. You have been a believer in social reform. Would you like to call yourself an orthodox gentleman ?

A. I am not orthodox.

Q. Then may we take it that these suggestions are those of a gentleman who believes he is a good Hindu and who wants to reform the Hindu society ?

A. From a religious point of view I may be considered to be an agnostic by some, though I am a Hindu socially.

Q. Do you think that your suggestions will be acceptable to that class of society which calls itself orthodox ?

A. I have written about these things in the papers, and have talked about them. But still I am securing votes from these orthodox people, every time I stand for Council. That shows they do not dislike me for my views on social matters.

Q. Might it not be because they are indifferent to what you do ?

A. In my opinion they like these things, though they might not act up to them. My constituents are very intelligent and literacy is highest amongst them as compared with other districts of U. P.

Q. May I take it that they give a sort of intellectual consent, though they themselves reprobate these ideas ?

A. I have talked to many of them about it and have told them that they should not take monetary considerations for their daughters, and they agree. But in practice they still do the same.

Q. Do you still think that your suggestion to fix the age at 18 is practical ?

A. I think it is practical and am convinced it will not lead to any revolution. I am talking of my division, Kumaon, and I know that if this age of consent bill is passed by the Central Legislature there will be no revolution there.

Mr. Shah Nawaz : Is it your opinion that husbands having cohabitation with their wives between 10 and 13 is not uncommon ?

A. Yes.

Q. At the same time you say that cohabitation is very rare before puberty. Is this statement also correct ?

A. Yes.

Q. Then how do you reconcile these two statements ?

A. The age of puberty of girls at present is 13 or 14. I said that cohabitation before that age is rare, and I think it is not contradictory when I say that cohabitation by husbands with girls of 10 to 13 are not uncommon.

Q. Do you think that the age proposed by you will be acceptable by the people in India ?

A. People may not like it, but if once it finds place in the statute book there will be no revolt against it.

Q. We are going to legislate for the whole of India, then what should be the age which will be acceptable to the whole of India ?

A. I think 16 will be acceptable to all people, though I would stand for 18.

Q. Do you think it will be acceptable to illiterate women ?

A. It may not be acceptable to them, but I do not think there will be any great violent revolution if it is passed. They would not like it because mothers-in-law want their daughters-in-law to bear children as early as possible after marriage.

Q. Don't you think that a considerable number of girls will go astray if they are not married before 16 ?

A. No.

Q. Not even among the lower classes ?

A. No, because of the constitution of our society I am sure they would not go wrong.

*Mr. Bhargava* : You have said that you want to put the *onus* of proof of age upon the husband. May I know your reasons ?

*A.* The reasons are that it is very difficult to prove, at present, that a girl is really under 16. If there is a doctor's certificate that she is 16, to my mind that would be quite a safe presumption unless the husband the person concerned controverts it by giving some definite evidence or proof that she is not under 16.

*Q.* Prosecution should be confined to the production of a medical certificate ?

*A.* Presumption should be attached to it, I do not mean that that should be considered quite enough for conviction.

*Q.* So that you do not want to place the burden on the husband but on the contrary you want to give some sort of presumption to a doctor's certificate ?

*A.* Yes.

*Q.* How long have you practised at the bar ?

*A.* I started practice in 1919.

*Q.* Do you realise that the Medical certificates, generally speaking, are regarded as worthless ?

*A.* I know doctors cannot give exact age unless X-Ray examination has taken place.

*Q.* Then you seem to think that a worthless piece of evidence should be given the force of presumption ?

*A.* I do not consider it worthless evidence. And in the interests of reform I would not mind even if a man who is not really guilty of violating the law being punished rather than the person violating the law going free.

*Q.* You realise that all this argument is in a vicious circle. The law is not broken if the age is not transgressed and the age is not known because there is defective evidence.

*A.* But my personal experience, as a lawyer, is that invariably it is not that the crime is not committed but rather it is difficult to get culprit convicted. There are more cases where really the offence has been committed yet as a matter of fact even doctor's certificate cannot help.

*Q.* So that in your anxiety to enforce the law and to punish the possible offenders, you would rather temper with individual liberty ?

*A.* Quite so. We do temper with individual liberty in our everyday life so far as penal law is concerned.

*Q.* Logically speaking you want to poison the fountain of justice with a view to attain reform ?

*A.* I do not think it is poisoning the fountain of justice. The accused has full right and opportunity to prove his innocence.

*Q.* Suppose an accused produced a medical certificate you would give the same force to that ?

*A.* Yes. Then more evidence would be called to supplement doctor's certificates and as to which doctor is correct.

*Q.* Do you think in criminal cases, if an accused has given a medical certificate there will be no other occasion to call the doctor ?

*A.* I would prefer to attach more importance to the doctor who has given the certificate to prosecution.

*Q.* In cases of this nature it will certainly not be proof of age that will be difficult but the greater difficulty will be to prove the act. The husband and wife being the only two witnesses and the husband being the accused the wife will not be a favourable witness. How will you get over this difficulty ?

*A.* There is no help for that otherwise there would have been many prosecutions.

*Q.* In sedition cases what happens. The police officer goes and reports. He is there by virtue of his right, but at the time such acts are committed no person



will be there. How do you say that police should have the same power to prosecute these cases as cases of sedition.

A. If the police were sufficiently vigilant they might catch them.

Q. Now take a case of a husband and wife where it is known that she is under a certain age but there is no proof. After she has menstruated can any doctor say after two or three days that consummation has taken place?

A. I think doctors can say.

Q. Supposing the age of the girl is raised to 18 and after the girl has passed 13th year no doctor will be able to say after 2 days that consummation has taken place?

A. I think doctors can say.

Q. Medical opinion is of no use in such cases?

A. I do not agree with that. I say the medical evidence can assist to a very considerable extent.

Q. Even if the girl's age is raised to 18?

A. Yes.

Q. Do you realise that under the present law no doctor can examine a girl unless it were with her consent and her consent will not be given.

A. You could amend the law on that point.

Q. Do you agree that whenever the husband and wife live together the law may presume that intercourse has taken place?

A. If the doctor is of opinion that consummation has taken place then the presumption will be that it is the husband who is offender.

Q. Suppose a husband and wife live together say for 4 or 5 months and the age of the girl is more than 14 and the age of the husband is more than 16, will you by law make a presumption that consummation has taken place?

A. Unless the doctor proves it I would not. With the age of consent I consider fixing the marriageable age necessary. I think that is absolutely necessary.

Q. Supposing it is accepted and the marriageable age is fixed at 16, in that case would you not make the age of consent cognizable?

A. That I will do. The only difference I would is this. The age of consent so far as husband is concerned may be lowered down to 16.

Q. My point is this. Suppose marriage law is passed and no marriage can be celebrated before 16 so that according to you if that is the age there will be very few cases or practically no cases of this nature. You think that police should interfere in those cases and you are not anxious to avoid harassment because you want to stop this evil, as it exists, but if the evil is stopped by this marriage legislation then I do not think you will allow the police to interfere in domestic affairs?

A. If the evil stopped there would be no need. But so long as it is not I would allow it.

Q. May I know if the police is very much popular in this part of the country?

A. It is not popular in our country but in England I know the police is very popular, because it is so serviceable to the public.

Q. Why do you want police interference if police is not popular?

A. Whether the police is popular or unpopular if you want to detect crime you have got to use them.

Q. Is there any dissatisfaction that these offences are not properly checked or proper prosecution evidence is not available.

A. Yes.

Q. If they are made non-cognizable what will be the difficulty?

A. Who is going to detect them.

Q. What is the guarantee for detection of cases today?

A. If the cases are cognizable then the police can take initiative in detecting and investigating cases.

Q. You say that on account of education the age of puberty is rising. I want to know what is your warrant for that.

A. My reason is that when girls are sent to school they spent such a lot of their time in education. So automatically their thought is diverted to education; they are absorbed in mental work.

Q. I want to know whether you know it as a fact that the age of puberty is rising?

A. I know it as a fact that among the educated classes, if a girl of 13 years of age is going in for higher education, I have noticed that signs of puberty in her case are not so apparent as you will see among the girls who are not in school.

Q. On account of good surrounding effects?

A. Yes and psychological effects. Poverty and poor food also bring about puberty earlier.

Q. Among the Naikas what is the age when they begin their profession?

A. 12 or 13.

Q. And those cases are not brought to court?

A. No.

Q. What is the reason?

A. It is difficult for the police to find out the age of the girl. She may be actually 13 but they will say she is 14 or 15. Nor does police bother about it.

Q. But it is decided in a number of other cases, e.g., cases under section 360. This age question is common to a large number of cases. What is the special difficulty about this?

A. If these professionals were examined so many cases will be brought to light.

Q. Do you mean to say these books (register of birth and death) are destroyed after some time.

A. Yes.

Q. Then why are they kept at all?

A. There is a prescribed book in which births and deaths are entered, when it is completed it may be after six months or a year or after several years,—the *Padhan* hands over that book to the patwari and gets a new book. The patwari returns it to the head office or he may even return it to *Padhan*; and no record is kept of the entries of the register.

Q. There is no register of births and deaths in any public office?

A. No. It is only with the malguzar that the books are kept.

Q. No statistics are taken?

A. Statistics are taken only of current year.

Q. You say there is obligation on some persons to report?

A. Yes, it is an obligation on the malguzar to report. After that it is not obligatory to presume the record either on the patwari or the malguzar. The district officer is not particular in preserving the book. If you go to the district offices you cannot find the birth and death registers.

Q. Have you ever enquired what is the basis of all these entries and why do they keep it?

A. Only to keep statistics for the current year.

Q. Is it for one year or for five years?

A. The book is preserved as that book is not finished. If you want back statistics they will look up old reports but they would not produce the book.

Mr. Yakub: What is your guarantee for saying that generally consummations take place before puberty?

A. I cannot give any definite proof.

Q. Has any such case come within your personal knowledge ?

A. I know that cases have occurred but they do not come to court.

Q. Did you ever attempt to report such cases ?

A. I could. 'A' has done this act or 'B' has done this act but I am talking of the general impressions that I got. I may know it for a fact that A's wife is 12 years old and circumstances would enable me to presume that he has committed such an offence.

Q. What is your authority for making such a sweeping and general statement ?

A. My authority is from the general impressions and hearsay. I have read several cases reported in the papers.

Q. But very few such cases come to light ?

A. Yes.

Q. How can you have any knowledge from the papers ?

A. Those cases which are reported come to light.

Q. May I understand that from the very rare and few cases about which you have heard or read in the papers you make such sweeping general remarks ?

A. That is my impression, based on reports I hear.

Q. Are your views about this law of marriage shared generally by the public ?

A. There is a large section of the public who share it.

Q. What do you mean by a large section ?

A. By the educated people it is shared.

Q. Generally your ultra-advanced views are shared by the educated people in the country ?

A. They may not agree with me that the age may be raised to 18 but I am sure they will agree that it may be raised to 16 ; and if a resolution were moved in the Council I am sure it will be passed.

Q. Don't you think that if the age of marriage were fixed at 18 there will be greater risk of the girls going astray ?

A. No, I do not believe that.

Q. What about the girls who work in the factories with men or in the fields and the prostitutes' girls in Kumaon ?

A. There may be a few cases in those classes but I do not think that cases will be so many that they would in any way affect the general morality of the people.

Mr. Kankhaiya Lal : Have you got village panchayats in Kumaon ?

A. Our Government has very reluctantly established a few panchayats on account of the Panchayat Act. In the whole of Garhwal District there are only 4 or 5 panchayats. Our hills were of course strongholds of old panchayats, some of whom still exist in out of way villages.

Q. Considering great distances in Garhwal and Kumaon and the difficulty of communication, would you recommend that the breach of marriage law cases may be laid before the village panchayats for decision ?

A. No, I would leave them to the court.

Q. In spite of the difficulty of long distances ?

A. Yes. In this connection I may express that I heard some witnesses advocating separate law courts for these cases but I would not advocate such separate law courts. I do not want special matrimonial courts, for such cases.

Q. Would you recommend that a system of registration of marriages should be established giving the names of the marrying parties and their ages so that the authorities concerned may know whether the law has been contravened or is likely to be contravened ?

A. I am very strongly in favour of it ; I think the registration of marriages is absolutely necessary. But the keeping of birth registers is more important.

Q. Who should be the authority to maintain the register of marriages ?

A. So far as the Kumaon hills are concerned we have got patwaris who are revenue officials as well as police officials and they can very well register marriages. They also maintain birth and death registers.

Q. What you suggest is this that in the case of registration of marriages the same agency should be employed as there is for registration of births and deaths.

A. Yes. In fact I would suggest spaces for marriage entries in the same register.

Q. What about the municipal areas ?

A. We would have a book in the municipal office.

Q. Would you place the obligation of reporting marriages on parents and guardians of the marrying parties or also on the priest ?

A. Anybody may do it. The obligation should be on parents, priests and the husband. Even if a stranger goes and reports to the *padhan*, the *padhan* should enquire all the particulars and enter them in his book.

Q. On whom should be the obligation of making a report on risk of paying a penalty ?

A. On the parents and guardians and even the pandits and mullahs and the husband. If marriage law regarding age is violated I would make even priests and mullahs and *wikils* liable to prosecution.

Q. Would you make these marital cases compoundable so that in suitable cases the magistrate would give permission to allow compounding ?

A. No. I am not even for fine, I am for punishment.

Q. Supposing the girl is 14 years old and the husband is 17 years old, don't you think it will be very hard for the wife to give evidence against the husband who may discard her and take on another wife and the life of the girl might be ruined for ever. If you allow it to be compounded they might amicably live afterwards ?

A. I would not allow compounding. I would not even exempt the girl or wife where consent is concerned. I would even suggest certain punishment for the girl as an abettor.

Q. I hope you will not send her to jail ?

A. I would leave it to the legislature ; but I would say that if she is really of 16 or 17 years a small fine may be imposed on her in lieu of imprisonment.

Q. If you make the girl punishable, the result will be that they will combine to hush up the offence ?

A. The girl will be punishable only in such cases where it can be established that she has played an important part.

Q. But so far as information is concerned she would not give the information and your whole object will be defeated. If she receives injuries she may possibly give information.

A. I see there is a great force in that. I would not insist on the girl or wife being punished ordinarily.

Q. You said that you are not in favour of matrimonial courts. If a family girl is dragged to court in such a case the result will be that she may have to wait in court for hours or for days till her evidence is taken and she will be subject to public gaze and observation in the verandahs of the court. Don't you think it will be better to have a separate matrimonial court to try such cases ?

A. No. If necessary a case might be heard in camera. Instruction may be issued to courts to expedite such cases or to take them up at once on the date fixed. A separate waiting room may be provided for them.

**Written Statement, dated 15th August 1928, of Khan Bahadur SHEIKH NASRULLA KHAN, Retired Deputy Collector and Secretary, Anjuman Islahulmuslimin and Mumtaz Orphanage.**

1. No dissatisfaction exists generally with the state of law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

2. (1) I am in favour of retaining the age of consent as it is. The experience has proved that the girls within the prescribed limit of age under the age of consent at times commit immorality (2) I am not in favour of making an advance on the present law because the age prescribed by law is suitable to this part of country with regard to the state of the country, to climate and to other circumstances. In India people of different caste and societies consider the early marriage of a girl to be as their moral duty. Moreover the elders of a family are much eager for the marriage of their girls during their life time to enable them to proceed to grave free from all anxieties. Sometime it so happens that parents with regard to their position whenever find funds at their disposal, endeavour to get rid of themselves by making speedy arrangement of the marriage of their girls.

3. Crimes of seduction or rape are not very frequent in my part of the country. The amendment of law in the year 1925 has not proved effective to check the progress.

4. The amendment of 1925 is regarded by public but it has affected only a particular class.

(1) It is not affective.

(2) It is not stimulating public opinion but to some extent educated class is in favour of it.

(3) I do not think advisable the postponment of marriage beyond 13 years.

Unless the education is spread among the public, it is difficult to find any measure effective.

5. Except in special cases the girls attain puberty between 13 and 14 years. Girls attain the age of puberty in 13 years in the meat eating classes or in those communities who live in good climate or in those who are accustomed to manual labour.

6. The cohabitation is common in Hindu caste before the girls attain the age of 13 years if gaona ceremony is performed before 13 years of age.

(2) Cohabitation is common in all classes and creed after puberty.

(3) No cases under the above 3 points have come to court as far as my knowledge is concerned.

7. To my knowledge the gaona ceremony is performed simply for the consummation of marriage. There is no religious injunction with regard to it as far as I know.

8. The gaona ceremony is generally performed among Hindu caste and consummation of marriage is done before puberty and after as well.

9. Except in any special case the attainment of puberty is considered to be a sufficient indication of physical maturity to justify consummation of marriage but the physical development of a girl is not attained for consummation of marriage where suitable environment are not available.

10. In India it takes long time to girls to be competent to give intelligent consent to cohabitation with a due realization of consequences but the society of illiterate and ignorant persons stimulate them to be fit for cohabitation from the age of 13 years.

11. Some such cases have come to my experience that in case the consequence of cohabitation ends in pregnancy of the girl either before puberty or immediately after, who is not enjoying good climate or comfort, the cohabitation causes injury to her health and body and prejudicially affects her progeny. I have come

across such cases, that the girls of weak constitution have suffered owing to repeated deliveries and that their mental condition had become bad and they failed therefore to nurse their children. But it cannot be said that such girls owing to weak constitution would have reached at such stage but careful care, sufficient diet and suitable climate which they could not get, are also responsible for it.

12. In my opinion in India the arrangements relating to confinement (Zacha Khana) has no connection with early marriage or with consummation of marriage. In India the supervision of confinement is not confined to mother only but the elder females supervise both the mother and the baby and it is only to their discretion that affects the health of girls. The ignorant and illiterate midwives are also responsible. Apart from the consummation of marriage of minor girls the infants after puberty are at times lost. This shows that it is not only the result of early marriage or consummation of marriage that child is lost.

13. There has been no development of public opinion in favour of the extension of the age of consent in marital and extra-marital cases except in the educated class.

14. In this country the women of old schools are in favour of early consummation of marriage on the strength of an ancient system and they feel much if done against the established custom.

15. The determination of the age of girls in connection with the offences under sections 375 and 376 I. P. C. is based on the opinion of Civil Surgeons. There is no other useful way to determine the age.

16. The difficulty in determining the age is not materially reduced or minimised if the age of consent is raised to 14 years or above it.

17. The two offences relating to marital and extra-marital cases should be separate and in my opinion the punishment of fine is sufficient in marital offences.

18. In my opinion the police should not have any right to interfere in the marital cases and the offences within the marital state should be tried in camera.

19. In my opinion the measure to be adopted to safeguard both the aims is very difficult but the investigation if carried on by Tahsildars and Deputy Superintendents would to a certain extent solve the difficulty.

20. In my opinion neither the enhancement of the penal legislation nor fixing a higher age of consent can stop early consummation of marriage.

21. In my opinion the progress of social reforms by means of education and social propaganda to secure the object is the best way but taking into consideration the present state of things it seems proper to rely on strengthening of the penal law.

**Oral evidence of Khan Bahadur SHEIKH NASRULLA KHAN, Retired Deputy Collector and Secretary, Anjuman Islahulmuslimin and Mumtaz Orphanage, Lucknow.**

*(Lucknow, 21st January, 1929.)*

*Chairman :* Are you Secretary of the Anjuman ?

A. Yes.

Q. Is the orphanage for girls or for boys ?

A. It is for boys.

Q. Do you know if a girl becomes mother before 14 complete or before 15 complete, it is injurious for her health or that for her progeny ?

A. Before 13 it is injurious but not after 13.

Q. What age do you think is suitable for her to become a mother without any injury to herself or to her children ?

A. If she becomes mother after 14 there will be no injury.

**Q.** Are you speaking of the Musalmans or of other communities also ?

**A.** I have been Sub-Inspector, Inspector and Deputy Collector and in connection with investigations I had to go in villages and towns up to Ghazipur and Moradabad and I have had occasion to mix with Hindus and Musalmans.

**Q.** You have said that you want to retain the present law of age of consent. You do not want to raise it ?

**A.** I think it is quite sufficient.

**Q.** And you have said that if girls are not married before 13 there is a danger of immorality ?

**A.** Yes. Marriage should be celebrated at 13 or 14 and if the age is raised higher to 15 or 16 there will be a danger to morality.

**Q.** But you have said that if she is not married within 13 there is a fear of immorality ?

**A.** I mean over 13 and not below 13. I do not want to raise the age because if a girl remains unmarried after 13 or 14 there is fear of immorality.

**Q.** When do marriages take place among the Musalmans ?

**A.** Generally marriages take place between 14 and 15.

**Q.** And the girls do not go wrong ?

**A.** They remain in purdah.

**Q.** Do you know of any community among whom girls are married at or after 14 and there is no purdah among them ?

**A.** Yes. By purdah I mean a good care is taken of her.

**Q.** If the age is raised to 14, do you think there is any harm ?

**A.** No.

**Q.** You do not like fixing the age of marriage ?

**A.** No.

**Q.** Do you think the present law protects girls below 13 ?

**A.** No. Consummation takes place before 13 but cases do not come to light.

**Q.** Then don't you think there is no use in retaining the present law ?

**A.** It is only for the reason that there will be some fear of law. It will have effect on the educated people but not on the general public.

**Q.** If an age of marriage is fixed why it would not have any effect ?

**A.** The result will be that it will be opposed by the people because it will not give them liberty to marry their girls at any age. If there is an old man he would like to marry his daughter in his lifetime but if there is a law he will not be able to do it.

**Q.** You admit that if a girl becomes a mother she is likely to suffer, then why do you not make a law ?

**A.** Girls will be protected but there will be other difficulties for the poor people.

**Q.** In deserving cases exemptions can be granted. A man can apply to the magistrate and he will be permitted to marry his daughter before the prescribed age ?

**A.** If there are suitable exemptions provided then I will have no objection to marriage law fixing the age of marriage at 14.

**Q.** You know there is infant mortality and children of young mothers die. Do you think early maternity is one of the causes ?

**A.** This can be one cause, but generally it is not.

**Dr. Beadon :** Can you give us any instances of girl mothers having been injured on account of early consummation or early maternity ?

**A.** I saw two cases in Allahabad. In one case a girl was married at 15 or 16. She got a child after every 2 years and after every delivery she became mad. After six months when she regained strength, she was able to take care of her children.

**Q.** Have you seen mothers of 14 ?

**A.** No.

**Mrs. Nehru :** Do you think there is any injury if a girl becomes mother at 15 or 16 ?

**A.** I think if girls become mothers at 15 or 16 there is no harm but before 13 it is injurious.

**Q.** Do you think that early marriage or early maternity hinders the education of girls and boys ?

**A.** If you want to send them up for higher education it adversely affects them.

**Q.** Are you in favour of higher education ?

**A.** Yes but for some people and not for all the girls. If you make a law the difficulty is that it may lead to immorality.

**Q.** Is it your personal experience that if girls are not married at 13 or 14, they go wrong ?

**A.** Yes, I have seen many cases.

**Q.** Among which class of people ?

**A.** I have seen it in all classes.

**Q.** Have you come across a girl within 16 years who may have gone wrong ?

**A.** Yes.

**Q.** There may be rare cases and such instances occur even among the grown up women. Have you seen them in a large number of cases ?

**A.** I think so.

**Q.** Do you think a girl can obtain religious education up to 14 ?

**A.** She can learn ordinary religious reading, writing, domestic duties and accounts but she cannot attain higher education.

**Q.** Do you think that in the present conditions it is good for the people to marry girls early ?

**A.** Yes. I think the sooner they are married the better they are. People feel it a great burden and they want to shake it off as early as possible. According to present customs they have to marry them early.

**Q.** But customs are made by public ?

**A.** If all the customs are changed then there is no harm.

**Q.** You have said that fine should be the only punishment ?

**A.** I think the punishment prescribed in breach of marital law is very high. Uneducated people think that they have a right to cohabitation after marriage with the wife.. Therefore I suggest that the punishment should be light and it should be reduced to fine only.

**Mr. Mitra :** May I know if you are a Shia or Suni ?

**A.** I am Suni.

**Q.** When do girls marry among the Mohammedans ?

**A.** From 14 to 16.

**Q.** What is the age of marriage among the lower classes in the villages ?

**A.** There the girls are generally married after puberty.

**Q.** And you say that marriages among the higher classes generally take place after 14 and you think that girls may go wrong if they are not married before 14 ?

**A.** Yes. If proper care is not taken there is a likelihood of their going wrong. I have myself seen instances.

**Q.** Do you know if among the Hindus cohabitation is common before girls attain puberty ?



A. After I received your questionnaire I consulted many people. Girls among the Hindus are generally married before puberty but gaona takes place immediately after puberty.

Q. Do you think a girl can understand the consequences of cohabitation intelligently at 13 ?

A. They cannot understand the consequences but a desire is created in them by the environments in which she is placed. It makes her believe that marriage gives her access to lot of enjoyments and she becomes converted to that idea. She comes to know of these things from the experience of her associates.

Mr. Shah Nawaz : If girls are not married after 14 there will be a danger of their going wrong in a very few cases ?

A. I cannot say.

Q. Do they go wrong in the lower classes ?

A. That happens in all classes.

Q. Do girls go wrong after marriage or before marriage ?

A. If a girl goes wrong before marriage people say it is due to her not being married but if she goes wrong after marriage they think it may be due to defects in her husband.

Q. You think society does not care about married girls going wrong ?

A. They do not attach so much value as they do in the case of unmarried girls.

Q. How long after marriage you think girls go wrong ?

A. I cannot say that and I cannot say whether it is due to social influences or whether it is natural.

Q. Do you think that on account of education they will not go wrong after 14 ?

A. I cannot say but I am of opinion that it is not necessary for girls to go to colleges.

Q. If there is a marriage law at 14 and exemptions are provided, will Mohamedans generally accept it ?

A. I cannot speak from the religious point of view but I think it will not be objectionable.

Mr. Bhargava : What is generally the age of puberty ?

A. It is between 13 and 14.

Q. The doctors are of opinion that cohabitation should not take place immediately after puberty and if that is done she will be weak and the children will be weak.

A. I do not agree with that.

Q. Have you seen mother of 14 or 15 ?

A. I have seen several but I have not noticed any illeffects.

Q. A doctor suggested that tuberculosis is on the increase both among the Hindus and Mohamedans ?

A. Yes it is on the increase but it has no connection with early marriage.

Q. Is hysteria increasing ?

A. I cannot say.

Q. Do you know when people in the villages marry ?

A. Among the lower classes of Hindus in villages marriages take place at 8, 9 or 10 ?

[ Q. Have you seen any injurious effects among those classes who marry early ?  
A. They are weak.

Q. Do you think that early motherhood is one of the causes of weakness ?

A. If other economic causes are removed i.e. they are provided good food, this would not be a material cause.

**Q.** If the age of consent is raised to 16 you can distinguish between a girl of 12 and 16 ?

**A.** By X-ray you may find out the age of the girl, otherwise it is difficult. I have been Kotwal, Sub-Inspector, Inspector and Deputy Collector and now I am special magistrate.. I can say from experience that it is difficult to find out the age of the girl in criminal cases.

**Q.** But the difference is of marginal ages i.e., whether a girl is 15 or 16, but there is no difficulty to distinguish between a girl of 12 and 17 ?

**A.** The difference is in marginal ages.

**Q.** If it is laid down that an officer not below the rank of Inspector or Sub-Inspector should enquire into these cases, then they may be made cognisable ?

**A.** Sometimes the Inspector or Sub-Inspector is engaged on enquiries in some other case. Of course in that case medical examination can take place in the meantime.

**Q.** If marriage law is not passed, are there any other means by which the age of consent law can be made effective ?

**A.** I cannot suggest anything.

**Q.** If there is a marriage law and if a man breaks the law what should be the punishment ?

**A.** It should be only fine.

**Mr. Yakub :** If the punishment is only fine it will be considered as an item in marriage expenses.

**A.** I do not think so. If there is a law it will have a deterrent effect.

**Q.** Do you think the registration of marriages will be helpful ?

**A.** There is no harm provided the public are not put to any difficulty in reporting the marriage. I think if the mukhia is given a number of prescribed forms, he may fill the form whenever necessary and send it to the thana.

**Q.** Should any fee be charged for registration of marriages ?

**A.** No.

**Q.** In the case of registration of births will it be helpful if the name is entered after sometime ?

**A.** There will be difficulties in such cases because in case of breach the offender will be fined. If there is a rule that a man should report the name within three months, I think it will be all right.

**Q.** You have said that if there is a marriage law, exemptions should be provided. Whom should application be made for exemptions ?

**A.** If the application is to be made to a district magistrate it will be very difficult for poor people to go from villages. In the case of villagers, mukhia should have it signed by the magistrate so that poor people may not be put to any trouble.

**Q.** For the trial of such cases if instead of ordinary courts special matrimonial courts are established consisting of one judge and 2 non-officials will it be helpful ?

**A.** Yes, and the cases may be tried in camera.

**Q.** What age do you recommend in extra-marital cases ?

**A.** It should be 16 at least but I have no objection to 18.

**Q.** Has your Anjuman got anything to do with the questions relating to marriage or age of consent ?

**A.** No.

**Q.** Have you consulted the members of the Anjuman about these questions ?

**A.** I have consulted some members but not all.

**Written Statement, dated 12th September 1928, of Mrs. PHULAVATI SHUKLA, B.A., Member of the Standing Committee of the All-India Womens' Conference and Secretary, Oudh Constituent Conference, Lucknow.**

1. There is this dissatisfaction with the law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code that the age limit fixed as "under fourteen" is too low. It should be raised to *under seventeen years of age* (i.e. when the girl has completed her sixteen). The exception under this law is very unsatisfactory and it should be altered as "Sexual intercourse by a man with his own wife, the wife not being under sixteen years of age is not rape."

So clause 5 under section 375 I. P. C. and the Exception should both be altered.

The age limit that has been increased by Sir Hari Sing Gour's Bill, i.e. from under 13 to under 14 years of age is not satisfactory, because there is very little difference in a girl of 13 years of age and that of 14 years of age. So if we raise the age at all, we should do it to that extent where an appreciable difference can very easily be noticed. Therefore, I urge that the age of consent should be raised to sixteen years in case of one's wife and eighteen years in case of any other woman. Thus we will find that a girl of 13 years can very easily be distinguished from a girl of sixteen and the offenders will have no chance of committing the crime and still escaping the punishment by showing the age to be less.

2. I shall just give the circumstances which justify making an advance on the present law.

As I have suggested in my answer to Q. No. 1 that the age of consent should be raised to sixteen, I hold that an advance must be made on the present law.

If we consider the matter from the medical point of view we will see that this age of consent (under thirteen) has resulted into detrimental effects. The girl is not only immature but she is not developed to the extent when she can endure the sexual intercourse without serious injury to her health. Therefore we find that women of India on the whole have a very poor health, and owing to the bad effect of premature sexual intercourse some are crippled for their whole life.

The wives who are forced to have intercourse with their husbands before the age of consent can never be expected to come to the courts and complain against their husbands for rape. A girl of twelve or thirteen can never be expected to have sense enough to justify or condemn her husband's act. But if the age of consent is raised to sixteen years, we will find less cases of rape as the girl will be in a position to guard herself against even her husband having sexual intercourse with her. Thus we will be solving many problems, at one strike, namely, reducing the number of rape cases at least those with the wives by their husbands, giving a chance to the girls to take care of their health and also reducing the child mortality. If the age of consent is raised up to sixteen, this means that the girls will not be married before sixteen, as it is very difficult to postpone the consummation of marriage till after the ceremony. Also if the girl is married at sixteen she will have enough time to complete her primary education at least.

3. Yes, the cases of rape and seduction are quite frequent in my part of country, i.e. the United Provinces of Agra and Oudh, as they appear in newspaper (which is the chief source of my information). The amendment of law made in 1925 raising the age of consent to 14 years has neither succeeded in preventing or reducing cases of rape or seduction. Therefore I would suggest the measure of increasing the age of consent, i.e. making an additional amendment to the law by raising the age to sixteen in the case of wives, to eighteen in the case of non-wives. This will surely prevent and reduce the cases of rape and seduction. As I have said before the difference between thirteen and fourteen is not a marked one, thus a man may commit rape on his own wife below the age of fourteen, and still prove that the girl is 14 years of age, but if the age of consent is raised to sixteen, then there will be no chance for such dishonest pretexs. In the case of non-wives, where I advocate 18 years, there will be still less chance of escaping punishment.

4. No. The amendment of 1925 raising the age of consent within *martial* state to thirteen years has not been effective in protecting the girls against cohabitation with husbands.

(I) If the girls are married then it is very difficult to avoid the consummation of marriage. It is only in some communities where the practice of "gauna" prevails that the consummation of marriage is postponed by not sending the girl to her father-in-law's place right after the marriage. But in other communities where the girls do go to their fathers-in-law's house immediately after the marriage, it is not possible to postpone the consummation of marriage.

(II) The amendment has not been successful to stimulate public opinion in the direction of prohibiting the cohabitation of girls with husbands. Though the educated class believes that the marriage should not take place before the age of sixteen still this does not constitute the majority of the people. So we cannot say that the public opinion has been stimulated.

(III) The marriage has not been put off invariably beyond 13, because the marriage before 13 has not been declared as illegal. So we cannot say that the law has been at all effective in all cases.

5. The usual age at which girls attain puberty in my part of country is 14. Though individual cases may be found to the contrary but the average girls are found to attain puberty at the age of 14. This differs in different castes, communities or classes of society. The girls of a rich family (non-vegetarians) generally attain puberty at an earlier age, say of 12. The girls belonging to Khatri and Bengali communities as far as my knowledge goes attain puberty at an earlier age than Brahmans and Vaishayays. This mostly depends upon the family and their environment and way of bringing up. But on an average we can say 14.

6. (1) The cohabitation is not very common in the United Provinces before puberty. Since the practice of early marriage is prevalent there arise a good many cases, where we find cohabitation before puberty, but generally it is postponed till girls do attain puberty.

(2) and (3) But the cohabitation is very common soon after puberty and before the girls become mature. It is generally thought that as soon as a girl attains puberty, she is quite mature and there is no harm or injury from the cohabitation. Hence the number of cases is very great where the cohabitation takes place before the girls are thirteen years. This is specially found in those communities or classes of society where the girl attains puberty before 14 years of age.

As far as my knowledge goes I do not think that any such cases come to Court, because the question comes up as to who is to bring these cases to court. Should the girl come forward to the court or her father or her father-in-law?

7. Early consummation of marriage is not due to any religious injunction. In *Manusmriti*, Chap. IX, shaloka 90, it is written that a girl must not be married until three years after the attainment of puberty. Besides the eight forms of marriage as suggested by Manuji clearly show that under any of these forms the girl must be quite mature, i.e. not less than 16.

But for centuries past the practice of early marriage is in existence and now it is thought by the people generally that it is religious injunction to marry a girl before the attainment of puberty, and if they break this rule or go against it then the penalty will be that the parents will not get the religious benefit of "*Kanyadan*." It is due to this idea that the lives of thousands and thousands of girls and children are sacrificed on the supposed notion of religious injunction.

'Gauna' ceremony is performed in my part of the country in several communities, but the *granthbandhan* ceremony is performed only among high class Kanyakubja Brahmans. Both of these ceremonies coincide with the consummation of marriage. In communities where the girl goes to her husband right after her marriage the consummation of marriage mostly takes place then and the "gauna" is not deemed necessary. In communities where the *granthbandhan* ceremony also takes place it coincides with the consummation of marriage, though gauna

follows afterwards. *Grunthbandhan* is performed at about one or two years after the attainment of puberty and the *gauna* is performed still later just when it is settled between the parties usually three or five years after the marriage, chiefly depending upon the age when the girl was married.

9. I sincerely believe that attainment of puberty is not a sufficient indication of physical development. A girl must be given at least three years after the attainment of puberty to develop herself and after this the consummation is justified and it will not bring any injury to the girl's health or that of her progeny. It is medical opinion that a girl is not mature and fully developed before she is 17 years of age. So if a girl attains her puberty when she is 14, three years must be given for her physical development and then at the age of 17 she is quite safe for consummation of marriage and no injury will be caused to the girl or to the progeny.

10. In India a girl of seventeen would be competent to give an intelligent consent to cohabitation with a due realization of consequences. This, however, depends much upon the training of the girl. If a girl is not properly brought up then we would find a girl of 17 as foolish as a girl of 14. But taking the majority of cases under consideration I think that seventeen years is the age when a girl begins to realise that she is a woman and she is prepared to take up the responsibilities of womanhood.

Even in law we know that a girl is said to become major at the age of 16, then why should we imagine that a girl becomes mature and responsible much before 16 years of age in the case of marriage?

11. I shall give one illustration where early cohabitation has led to serious injury to the girl and the child.

Next to my house there is a Gaur Brahman family rather poor. They had a girl 11 years of age. She was married to her sister's husband, because her sister did not give birth to a son. So this girl was married to her brother-in-law. The girl had not attained puberty but the cohabitation took place. The husband was 55 years of age. When she was 14 years of age, she gave birth to a son. The son was physically deformed and could not live for more than 5 days. The baby died and the girl had such a shock that since then she has not kept good health even for a single day. It is now three years since she gave birth to the first child but she had not had any other. It is the doctors' opinion that now she cannot give birth to any child. In this case we can clearly see how brutally the girl has been treated. She is not happy for a day even. Hundreds of such cases occur every day, but I chose to write this special one as I was a witness to this whole thing, because this little girl was a playmate of mine.

12. Early consummation of marriage is to a very great extent responsible for high maternal and infantile mortality. Most of the girls in this country only know childhood and motherhood. If a child becomes a mother how can she possibly take care of a child? This girl is not quite mature and the consummation takes place with a result that she becomes crippled for her life and her internal organs are all thrown permanently into disorder. If she bears a child at such an early age, the child is either not normally delivered or if so then it is physically so weak that it can hardly survive for any length of time after the birth.

The child mother is generally incapable of looking after the child born of her and so the lack of proper bringing up causes the death of the child. Similarly the mothers also meet with early death partly because of the injury to their person and partly because of the shock and other causes. If the consummation does not take place till the girl is 17 years old, then she will get enough time to develop her organs and will also come to realise the responsibilities of motherhood and also of womanhood.

The children born when the girl is seventeen or eighteen will be physically strong and thus infantile as well as maternal mortality will be reduced.

13. Yes. Within the last three years there has been a further development of public opinion in favour of extension of age of consent. But this will be found largely in educated classes especially the middle classes. I do not know if this

development of public opinion is due to the amendment of 1925 or due to the growth of public opinion in social matters.

14. The elder ladies in family favour early marriage and also early consummation of marriage but the other ladies favour early marriage, but not the early consummation of marriage; but the two go together and it is impossible for the latter to exercise any check upon the former.

15. I think that there must be difficulty in determining the age of girl in connection with offences under section 375 and 376 I. P. C., because the difference between 13 and 14 is very little. The only measure that I would suggest to minimise the difficulty is to raise the age of consent from 13 and 14 to 16 and 18 years.

17, 18 & 19. I can not answer these questions.

20. I think that penal legislation fixing a higher age of consent for marital cases as well as legislation fixing the minimum age of marriage will both be effective. One would punish those who offend the law and the latter will stand as a check against marriages before the proper age.

21. Yes. I would prefer to rely on the strengthening of the penal law to secure the object in view than to rely on the progress of social reform by means of education and social propaganda.

Social reforms are going on in India for the last 50 years at least but their achievement in this direction has not been much. In cases where social defects are eating away the vitals of society they can best be removed by the penal law. The fear of punishment will in such cases secure the desired object. But if we rely merely on social reform the progress will be very slow and we can not say with certainty whether we will gain the object which we have in view even in fifty years. Therefore I urge for strengthening the Penal law.

**Oral evidence of Mrs. PHULAVATI SHUKLA, B.A., Member of the Standing Committee of the All-India Women's Conference and Secretary, Oudh Constituent Conference, Lucknow.**

*(Lucknow, 21st January 1929.)*

**Chairman :** Are you a member of the Standing Committee of the All-India Women's Conference ?

A. Yes.

**Q.** And you are the Secretary of the Oudh Constituent Conference ?

A. Yes.

**Q.** What would the younger generation of girls like, would they like to have a law of consent or the law of marriage or both and if so what ages ?

A. The educated girl friends of mine want that there should be a law fixing the age of marriage and also a law raising the age of consent and they want at least 18 for marriage and same for consummation. But if we explain to them the difficulties that we realize ourselves they are willing to come down, as a compromise, to 16 but not below that. And the girls who are not educated and are not of the same age as mine, but of course have been married, realize the defects of being married earlier and they want 16.

**Q.** Do you think that the evil of early maternity is so much spread about here amongst women of all communities that you think some remedy for that is necessary ?

A. Yes, I think so.

**Q.** In what communities is it very bad ?

A. So far as my knowledge goes it is very bad among Khatries and Bengalis.

Q. Do you know anything about Vaishyas ?

A. No.

Q. Khatris in Lucknow ?

A. Yes.

Q. Do you think that the evil is great amongst them ?

A. Yes.

Q. In that case do you know of any case of very early maternity amongst them ?

A. I have seen cases at the age of 13 and have heard of cases even when the girl has just stepped in her 12th year.

Q. Do you think then that the present law of age of consent at 13 is broken in many cases ?

A. One or two cases I have heard but I can't say that it is very general.

Q. What do you think will the orthodox ladies, elderly ladies say over 40, think about this measure ?

A. They are not willing to postpone the marriage but they are willing to postpone the consummation. They are not in favour of consummation before 16.

Q. Even the orthodox women ?

A. Yes. I am talking about the orthodox ladies of my Kanyakubja community.

Dr. Beadon : They do not on account of religion make it a point of having marriage before puberty ?

A. No. They wish to do so, but on account of the difficulty of securing suitable husbands they cannot possibly get their girls married before puberty.

Chairman : Have you thought of any means by which this wish of theirs could be fulfilled, namely, that marriages may be permitted at the age they like and consummation of marriage may be postponed till 16 so that early maternity may not come ?

A. It is very difficult. I don't think there is any method of doing that.

Q. How do they hope to do it themselves supposing a girl is married at 14 ?

A. If the girl is married to a widower the dowry that the father of the girl will have to give will be less and hence they marry their girls early. In these cases Gaona is not postponed for 3 years as in other cases.

Q. Are there many such cases ?

A. Yes.

Dr. Beadon : You say you have seen maternity at 13. Won't you mind giving us details of one or two cases that might have come under your personal observation ?

A. I know of a case where the girl was married at the age of 12 and I should think consummation also took place immediately. She fell ill and got consumption and was crippled for the whole life.

Q. How long after marriage was that ?

A. She began getting fever a month after her marriage and when she was examined it was found that she had got consumption.

Q. Was that recently ?

A. 3 years back.

Q. Have you seen any other case like that in which the child suffered on account of being born of a premature mother ?

A. I have seen many children who are weaklings. In one case the girl became a mother when she was just over 13. The child was very weak and the girl also did not know how to look after the child and nurse it. The child was always ill there was always something wrong with the child. Somehow or other the child survived and is still living. But no serious injury was done to the mother's health.

Q. But is the child now alright ?

A. Even now it is very weak.

*Mrs. Nehru* : Do you think amongst the girls there is any resentment for their marriages being fixed by their parents ?

A. There is.

Q. Do they desire to select their own husbands ?

A. Yes. Of course if they get good husbands they do not complain, but if the husband is not according to their desire they find fault with the parents and resent.

Q. They do complain ?

A. They do. There was a case among my own relatives. The girl was married at the age of 14 and when she attained maturity, she refused to go to her husband's house. My father had a hard time to bring her round. She actually refused as the husband was immoral, or on some other ground. This happened when the girl was 17.

Q. Was she educated in a college or school ?

A. She had self education and had studied English. She lived in a village.

Q. Is there any ceremony performed at the time of consummation ?

A. ' *Granthbandhan* ' ceremony is performed.

Q. *Granthbandhan* comes after Gaona ?

A. There is marriage, *Granthbandhan* and then Gaona. At the time of *Granthbandhan* consummation takes place. The girl is sent after Gaona.

Q. What is the significance of Gaona then ?

A. Consummation may take place at the girl's house and it may take place two or three days before Gaona.

*Mr. Bhargava* : What is the distance of time between Gaona and *Granthbandhan* ?

A. That depends upon the maturity of the girl. If the girl is mature it takes place early. Marriage is not complete before the *Saptadi* is completed and consummation cannot take place before that.

*Mrs. Nehru* : Have you heard of cases of consummation before puberty ?

A. Yes.

Q. Among what class of people does it take place ?

A. Among Gour Brahmins and among Saryupari Brahmins.

Q. Is it very general ?

A. These cases are very scarce.

*Mr. Mitra* : What do you consider to be the ideal age for marriage ?

A. I should say 18.

Q. What age do you recommend under the present circumstances ?

A. 16.

Q. You certainly know that there are orthodox people who sincerely believe that they must get their girls married before puberty though they are ready to postpone consummation till after 16. Are you ready to make any exemption for those people in your marriage law ?

A. No. There is no sense in marrying a girl before puberty. In that case we may have to marry a girl at 10. Her whole career is gone that way. After marriage it is in very rare cases that she is allowed to continue her studies. There is absolutely no sense in marrying a girl at 10.

Q. Do you think it is not possible to have the marriage celebrated and then continue the studies ?

A. It is possible, it has been possible in my case, but generally either the parents of the girl or the parents of the boy don't allow the girl to prosecute her studies further.



**Q.** At the same time you know India is in a higher spiritual plane. Don't you think we should make a concession to these orthodox people ?

**A.** But it is false that there is an injunction to that effect.

**Chairman :** It is not a question of false or true. There are people who believe it to be right. There are different interpretations, but they believe their interpretation to be right. In those cases who sincerely believe that it is their religion to marry a girl before puberty, are you ready to make exemptions ?

**A.** No.

**Q.** Even if it is possible to postpone consummation ? In some communities Gaona takes place and consummation takes place only after that.

**A.** I do not understand how it is possible in communities where Gaona takes place right after marriage.

**Q.** It is the custom in Madras that though marriage is celebrated early, consummation is postponed. If there may be a provision in law of taking some bond from the parents that the girl will stay in her father's house till she is 16, are you ready to take into consideration the religious belief of these people ?

**A.** Religious belief in such a matter should be sacrificed for the national well-being.

**Q.** What punishment would you suggest for the breach of the marriage law ? Would you like imprisonment or fine ?

**A.** I would suggest imprisonment.

**Q.** Imprisonment only ?

**A.** Yes. Fine would do no good, rich persons can pay off the fine and break the law.

**Q.** Even for the first few years you don't like to have fine as an alternative ?

**A.** No.

**Q.** What should be the term of imprisonment ?

**A.** Six months would do.

**Q.** Least or the highest ?

**A.** Least.

**Q.** What would be your maximum punishment ?

**A.** It would vary with particular cases. For instance if there is a widower of 20 or 25 and is quite independent and still breaks the law, for him I should say it should be at least 3 years' rigorous imprisonment. If parents are responsible 6 months are enough.

**Q.** You have to fix one maximum and not different for different persons ?

**A.** One year would be enough then.

**Q.** Whom would you punish ? Would you punish the parents of the bride and the bridegroom or either of them or the priest ?

**A.** Whoever is directly responsible for breaking the law, for bringing about the marriage.

**Q.** Even if it is the mother ?

**A.** Yes.

**Q.** You remember that you have suggested only imprisonment and not fine even as an alternative. The poor mother may be carried away by her religious notions, do you want her to be imprisoned ?

**A.** As an alternative fine may be provided.

**Q.** If it is not possible to have a marriage law there should be consent law still ?

**A.** Yes.

**Q.** Can you suggest any effective means by which, if there cannot be any marriage law, the consent law may be made effective, or do you think merely raising the age of consent will be sufficient ?

A. It would be sufficient.

*Mr. Shah Nawaz :* Do you think it would be effective without the marriage law ?

A. I think we should have the age of consent law at least in any case and increase the age to 16.

*Mr. Mudaliyar :* You have said 16 should be the minimum age of marriage. That would involve some discretion on the part of girls in choosing their husbands and that is the reason why you have suggested 16 as the age of marriage ?

A. That is not the reason. It will involve that.

Q. Do you think girls in rural areas are fit to select their own husbands ?

A. They are not fit, but they can at least choose one out of two or three. If sometime on account of pressure or for some reason or other the parents want to marry a girl to an old man or a man who has some disease and she knows of it, she can refuse. That much she can do.

Q. But don't you think that high age would bring about that sort of revolution where the bride will have a potent voice in selecting or at least refusing a husband ?

A. It will.

Q. At the present state of education do you think we should bring about such a state of affairs ?

A. What is the harm in that ? If the girls feel themselves prepared then they can. I would not advise however that the girls should be given complete freedom in choosing their husbands.

Q. If they are educated then they would be in a position to make the right choice or object to a wrong choice. But with the present state of society in rural areas when girls have no information and no education don't you think that we should not take that step. After all our custom of the parents choosing their husbands for the girls does not work out to be such a great hardship as is made out ?

A. I approve of the custom. I would not make the girls completely free in choosing their husbands.

Q. If the age of marriage is fixed as high as 18 don't you think that practice must break down ?

A. No, it should not. In case where the parents are not just and reasonable she can break the practice. But where the parents are just and reasonable I see no reason why the girl should refuse to marry, but if a girl refuses she should not be forced to marry.

Q. Is it your experience that the parents are very unreasonable and unjust in making a choice ?

A. Except where they are advanced and educated, they are very, very unjust.

Q. Is the practice of marrying old men very prevalent in your community ?

A. Yes.

Q. Is the disparity of age between the bride and the bridegroom very often great ?

A. Very often it is.

Q. I understand you were suggesting 6 months or one year's imprisonment in the case of breach of marriage law. What would you suggest in the case of breach of the age of consent law ? It would be much more severe. You would not be satisfied with fine only.

A. No. The punishment should be severer.

Q. You will be content with mere warning in the case of first offence ?

A. It should be left to the discretion of the magistrate.

*Mr. Shah Nawaz :* Do the educated women truly believe that they are the victims of a social evil in having child marriage among them ?

A. Yes.

Q. Is that enlightenment shared by the women generally ?

A. Yes.

Q. Even by the illiterate women ? Do the illiterate women wish that their daughters should not be married at 13 or 14 ?

A. They should be married, but no consummation should take place before 16.

Q. Don't the grandmothers desire that they should have grandsons ?

A. No. They would like to see a new bride but they won't like consummation at an immature age. They are so young sometimes that I have seen them sleeping with their mothers-in-law.

Q. You say there should be imprisonment and no fine ?

A. I have said there should be fine as an alternative.

Q. Or both ?

A. One of the two.

Q. Who do you think should be the complainant in these cases ? You know the parents are not interested in making a complaint. Would the ladies take up this work ? Would you for instance as the Secretary of the Oudh Constituent Conference take up this work ?

A. If I come across any such cases where the law is broken I am prepared to report.

Q. Will women take up this work ?

A. I can't say.

Q. Would you permit any person to make a complaint ?

A. Yes, except the enemy of the party.

Q. No one else but the enemy would report ?

A. An Enquiry Board of a few ladies should be fixed up to take up this work. As a body the association of women may not report and if an Enquiry Board is set up there will be no grievance.

Q. Do you think girls of lower classes who work as labourers in the open fields will keep straight if they are not married till 16 ?

A. Their marriage is no marriage, it is not binding on them. I don't see any more reason why they should go wrong without marriage than after marriage.

Q. Don't you think it would be a rather sudden jump to go to 16 all at once ?

A. I don't think so.

*Mr. Bhargava :* You say women associations will undertake some kind of work in connection with the administration of this law ?

A. I said some Enquiry Board should be fixed up for the purpose of reporting.

Q. The present associations of women that are working can only be useful in popularising this measure ?

A. Yes, in doing the propaganda work. They can also report cases when the law is broken.

Q. But if in doing this propaganda work they go to the house of a particular person and the breach of the law is reported next time they will not be allowed ?

A. There should be a separate enquiry board of ladies for this purpose.

Q. As regards your association are there any orthodox ladies who are members of your association ?

A. Yes.

Q. How many orthodox ladies have you got ?

A. We have about 4 or 5.

Q. Out of a total number of ?

A. 80. As soon as orthodox ladies become members of our association they leave purdah and other things and we have therefore got only 4 or 5 orthodox ladies.

Q. Do the ladies of your community insist on their husbands marrying their daughters early ?

A. They do not insist. They certainly keep bringing to the notice of the husband that the girl has reached such and such age and should be married. But if the husbands explain to them that it is not good to marry the girls early they keep quiet.

Q. Because in your community girls are married at a later age than other classes like the Vaishes the percentage of the educated is more ?

A. The percentage is very poor.

Q. So that late marriages do not necessarily mean more education ?

A. It is not a late marrying community at all. At 13 or 14 consummation takes place.

Q. Can you say why is your community not advanced in education ?

A. I am perhaps the only lady who has gone for higher education. Education is still looked with prejudiced eyes.

Q. Can you say, because consummation does not take place so early in your community, girls are stronger than other communities ?

A. They are.

Q. If there is a Mahamahopadhaya orthodox Brahmin of Benares who sincerely believes that he must perform the marriage of his girl before puberty, otherwise he will have to perform a *praschitam*, will you make an exception in his case and grant him exemption and make him free from the rigours of this Act ?

A. No.

Q. Because you fear if one exemption is granted everybody will come forward and ask for it ?

A. Yes.

Q. Would you like to send such a man to the ordinary jail or the civil prison ?

A. He can be fined and not sent to jail.

Q. This *Grunthbandhan* ceremony is a part of the marriage ceremony and the marriage is not complete without this ceremony ?

A. It is not complete without it.

Q. If a husband dies between the 6th Padi and this particular finishing touch the girl is not considered to be a widow ?

A. She is considered to be a widow.

Q. On the occasion of this ceremony does the marriage party go to the house of the bride ?

A. Only the boy goes.

Q. Is any dowry given ?

A. On the occasion of Gaona the whole party goes. On this occasion no dowry, etc., is given.

Q. So the 'Barat' goes on two occasions ?

A. Yes, that is why the persons who are poor try to marry their girls to widowers. They are saved the expense on one occasion.

Q. The number of the 'Barat' is the same ?

A. Everything is the same, less the things given to the daughter.

Q. What is the distance of time between marriage and Gaona ?

A. Never less than 3 years.

*Mr. Md. Yakub* : Do you or do you not like people of your religion to follow their religious injunctions ?

*A.* Yes, I would like them to follow their religious injunctions.

*Q.* Do you consider Smrities and Shruties as your pious and religious books or not ?

*A.* I do consider them to be.

*Q.* Is it not a fact that there are injunctions which enjoin the marriage of girls before puberty ?

*A.* There are injunctions in Puranas and they were introduced much later by priests and purohits, those who wanted to save our religion in critical times.

*Q.* What interest has the priest got in introducing such injunctions in religious books ?

*A.* They did this in the interest of their religion, in order to save it ; and now it has become a practice. The two things are mixed.

*Q.* You think really it is not a religious injunction ?

*A.* It is not.

*Q.* If it were a religious injunction would you like the people to follow it ?

*A.* I would not like them to follow such useless injunctions

*Q.* You don't want people to follow their religious injunctions ? You are prepared to discard them in favour of social reform.

*A.* This particular injunction I am prepared to discard.

*Q.* Is any Government, especially a foreign Government, justified in interfering with the domestic affairs of the people ?

*A.* Why not ?

*Q.* You want Government to interfere in domestic affairs ?

*A.* Why did the Government interfere at the time of Suttee ?

*Q.* But two wrongs don't make one right ?

*A.* But when public opinion wants a particular law why should not the Government enact it ? When the majority of the people want it why should they not do it ?

*Q.* You think laws should be made after consulting the wishes of the majority of the people of the country ?

*A.* Yes.

*Q.* Are you prepared to say that the majority of the people of the country are willing to have this reform ?

*A.* I can't say that. Persons whom I come across are willing to have it.

*Q.* If it is shown that the majority of the people are against this legislation, the age of marriage law and the age of consent law, then the Government would be justified in not having this ?

*A.* I would ask Government to make this law.

*Q.* But why should Government in this particular measure follow the opinion of the minority and ignore the majority ?

*A.* Because the minority consists of persons who are educated, who are literate and who understand the good of the society and of the country. Masses are not the persons who will tell you what legislation should be undertaken.

*Q.* Why do you want that marriage should be celebrated at 16 ?

*A.* Because the girl gets fully developed, has reached the sense of discretion and gets enough time to finish the elementary education.

*Q.* By whom are marriages arranged ?

*A.* By the parents.

*Q.* Even a girl of 16 or 17 has no voice in arranging her marriage ?

*A.* I don't believe that she should arrange her marriage.

Q. Have they got any voice ?

A. No.

Q. Are they consulted ?

A. Not in my community.

Q. Then what is the use of raising the age ? Take the family of Nehrus ; in that family girls are not married before 16 or 17. Are the girls in that family consulted ?

A. They must be consulted. If they are not consulted, in their heart of hearts at least they want to approve of the husband.

Q. Unless you give them a right to have a voice in their marriage how by simply raising the age you are giving protection to the poor girl ?

A. In this way they will at least refuse and say that they are not going to marry a particular husband.

Q. Can a girl under the present circumstances refuse a husband selected by her parents ?

A. She can if she is educated.

Q. Has any instance of an educated girl of 16 or 17 come to your knowledge where she has refused to marry a boy selected for her by her parents ?

A. A girl of 16 or 18 can tell her mother or other ladies that she is not willing to marry and then her father can come to know of that.

Q. Has any instance come to your knowledge where the girl has refused to marry a husband selected by the parents ?

A. Yes.

Q. Is it a fact that mothers and mothers-in-law are more responsible for early marriage than fathers and fathers-in-law ?

A. I think fathers and fathers-in-law are more responsible. The women keep bringing it to the notice of their husbands that the girls' age is such and such and should be married, but if the husbands refuse and say this is not the proper age they keep quiet. They can't go beyond that. I can't put the blame on them.

Q. Not at all ?

A. No. 5 per cent. of the blame may be on them, but not much.

Q. In the case of the infringement of the marriage law whom would you consider to be the accused, the father or the mother or both ?

A. Whoever is directly responsible for bringing about the marriage.

Q. What do you mean by that ? It will be very difficult to say whether a man is directly responsible or not ?

A. I don't know law and I can't say.

Q. But don't you think that both the father and mother of the boy and the girl should be held responsible for arranging the marriage ?

A. Yes.

Q. And equal punishment should be given to both the father and the mother ?

A. Not equal.

Q. You want to be more lenient to the mother ?

A. Yes.

Q. What punishment would you give ?

A. No punishment if the father is there. If she is the only one and has brought about the marriage she can be fined. If she has got a husband the husband should be punished, and not she.

**Written Statement, dated 9th September 1928, of Rani LALIT KUMARI,  
the Dowager Rani of Mandi, Naini Tal.**

1. Yes.

2. (1) No circumstances to justify the retaining of present age limit.

(2) For the sake of health and physical development of our girls and their education and in the interest of future generation and to prevent the physical deterioration of the people in general.

3. Rapes committed by husbands are difficult to be detected and the raising of age has not effected any improvements. To make the law effective it is necessary to place the burden of proof of age being beyond statutory age on the husband. At the same time it is necessary to make registration of birth and marriage compulsory.

4. (1) No.

(2) No public opinion has been stimulated as yet.

(3) It would protect provided means are adopted to detect cases and determine the age.

5. In well-to-do families between 12 and 14 in the plains ; and in the hills between 15 and 18 years. Among the poorer classes two years later than the above in the plains. In the hills about the same.

6. Very few cases, but are not unknown. Cases of rape by strangers do come to court. But those by husbands do not.

7. No.

8. Goana takes place but in cases of puberty or near puberty and particularly among Rajputs Goana takes place next day or within few days.

Garbhadhan takes place among higher classes after conception but is getting rarer.

9. No. Three to four years after puberty, development can be said to complete.

10. At the age of 15 or 16.

11. ....

12. Yes. Early consummation is principally responsible for the physical deterioration of the people. Surely the infantile mortality is greatly due to it. It affects the physical and intellectual progress of women, children and people in general.

13. There is a public opinion amongst educated class to raise the age of consent.

14. Amongst uneducated women there is a general desire to see grandchildren as early as possible.

15. Yes. There is no reliable proof to determine age. (Arguments suggested above.)

16. No.

17. ....

18. ....

19. ....

20. No. Raising minimum age would help and would be in consonance with public opinion.

21. Legislation to strengthen age is necessary.

**Oral evidence of the Dowager Rani LALIT KUMARI, Saheba of Mandi State, Lucknow.**

(Lucknow, 21st January 1929.)

*Chairman :* You lately presided at Patna at the Women's Conference ?

*A.* Yes.

*Q.* Has any resolution in connection with the age of marriage or the age of consent been passed ?

*A.* Yes.

*Q.* What are the ages that have been recommended ?

*A.* I think it is 16 for girls and 20 for boys. I don't remember exactly.

*Q.* Do they want both the marriage law and the age of consent law ?

*A.* We want Harbilas Sarda's Bill. We would prefer that but we have passed resolutions regarding both Sir Hari Singh Gour's Bill and Harbilas Sarda's Bill.

*Q.* Our difficulty is regarding the orthodox. Can you suggest any remedy by which we may permit marriages at any age, even before puberty, and stop maternity definitely before 16 ?

*A.* There is no method. Once the girl is married you can't stop it.

*Q.* It is therefore best according to you to have the law of marriage ?

*A.* Yes.

*Q.* How do you think will the orthodox ladies take it ?

*A.* They may not like it.

*Q.* Are there any ladies amongst the orthodox class who feel that they would like to marry their daughters late but on account of social pressure they have to marry early and would thus welcome the law ?

*A.* The trouble is that the orthodox people are not educated. The common class of people would listen but the orthodox people won't listen.

*Q.* Do you think that early maternity before 14 or 15 is ruinous to the girl ?

*A.* Absolutely and it is ruinous to the children also.

*Dr. Beadon :* You have missed our question No. 11. Is it because you don't know any case in which either the girl has suffered or the child has suffered on account of early consummation ?

*A.* I have seen several cases. One girl was of my own caste. She was married when she was 10½ and she got a baby before she was 13. The result was that she got consumption. At 14 again she got the baby and the result was that it had to be taken out.

*Q.* Did she die ?

*A.* She has been alive and the first baby is alive.

*Q.* And the second baby ?

*A.* That had to be taken out.

*Q.* Was that lately ?

*A.* Three or four years back.

*Mr. Shah Nawaz :* Do the ladies feel very strongly on this question of early marriage ?

*A.* The educated don't want to marry their girls early and the uneducated do not understand anything. Some are very poor and can't afford to keep their girls till late and they marry very early.

*Q.* You think this must be stopped ?

*A.* Yes.



**Q.** You think under all circumstances we must resort to legislation ?

**A.** We must.

**Mr. Kunhaiya Lal :** In view of the orthodox opposition would you be prepared as a first step to recommend 14 as the age of marriage ?

**A.** I know there are very orthodox people like our Purohits and I have seen among them girls are married when they are 16 or 18. In my Illaqa now a law has been enacted fixing the age at 14 and I have seen girls are married at 16 or 18. I know there are some Brahmins from the Kheri District who marry at 6, 7 or 8.

**Q.** We have had evidence in Madras and it was said that the Brahmins would not like to have the age of marriage fixed. Would you as a first step agree to 14 if nothing higher is possible ? The lower class people say that they can't keep their girls late and the villagers of the place which we visited say that they would like early marriage but would have Goana late. As a concession to the orthodox and as a concession to the lower classes, as a temporary expedient would you start with 14 ?

**A.** No. But in the case of these people who marry at 8, 9 or 10 if you don't allow them to marry early they run away and marry somewhere else.

**Q.** Would you have 14 for marriage and 16 for consummation ?

**A.** Personally I won't agree.

**Q.** Would you recommend this as a matter of practical administration ?

**A.** I can't.

### **Oral evidence of Dr. D. D. PANDYA, D.P.H., Assistant Director of Public Health, Lucknow.**

*(Lucknow, 21st January 1929.)*

**Mr. Kanhaiya Lal :** Are you an Assistant Director of Public Health in charge of the Provincial Hygiene Institute ?

**A.** Yes.

**Q.** Are you also Professor of Hygiene in the Medical College of the Lucknow University ?

**A.** I am Professor of State Medicine in the Lucknow University.

**Q.** How long have you been in this Hygiene Institute ?

**A.** For the last 8 years.

**Q.** Before that ?

**A.** Before that I was in charge of the different ranges.

**Q.** Were you also Health Officer at Benares ?

**A.** Yes ; for 8 years. Before that I was in the Punjab as Plague Officer.

**Q.** In all how much service have you put in in the Department of Public Health ?

**A.** 26 years.

**Dr. Beadon :** You have given us the death rate in child-births. Does that refer to the deaths at or below a particular age ?

**A.** No ; they are all child-births.

**Q.** You say that in Agra the death rate was 1.53 in 1926. Can you give us any idea of the number of births that took place so that we can get the number of actual deaths in child-birth ?

**A.** I shall give you these figures later.

*Q.* You say that infant mortality in Bihar and Orissa is 133 and in C. P. it is 221. Do you think that these figures are accurate? We have been told that everything is backward in Bihar and Orissa and it is the earliest married province.

*A.* I cannot vouch for the figures; they have been taken from the reports of the Director of Public Health.

*Q.* Is the child mortality in Lucknow decreasing?

*A.* Yes.

*Q.* Why?

*A.* Because we are making more efficient arrangements as regards labour and so on as compared with what they were before. Gradually the work of the welfare centres is becoming felt.

*Q.* In Cawnpore in 1926 the death rate under phthisis is : men 2.44 and women 8.08. Why is it that there are four times as many women dying of phthisis? Have you drawn any conclusions from these figures?

*A.* The first thing is women live in seclusion. Early marriage, frequent child-bearing and improper feeding are other causes.

*Q.* Which do you think is the most potent of all these?

*A.* I think early marriage is more potent, and purdah to some extent.

*Mr. Yekub :* How do you say that early marriage is more potent?

*A.* There are other reasons as well; but these deaths are especially between 10 and 15, the child-bearing period.

*Q.* Does not that only mean that they have greater risks in child-birth as women which men have not?

*A.* If there is no child-marriage there will be no early consummation of marriage. Child-marriage indirectly affects mortality.

*Q.* Have you given thought to this subject yourself?

*A.* I cannot substantiate them by actual figures. That is my impression.

*Mr. Mudaliar :* In the death rate chart you have put child-birth as one of the causes of death. Is it not a fact that in the case of deaths due to child-birth, child-birth as such is not reported as a cause of death?

*A.* I do not think all are reported. But the figures cannot be less than those given in the statement.

*Q.* What do you think is the safe age for maternity?

*A.* 18.

*Q.* We have been told that the process of parturition is much easier at a lower age than at an advanced age. Is it so?

*A.* Advanced age means 25 or 30.

*Q.* Between what ages would it be fairly facile?

*A.* About 18 to 20.

*Q.* Beyond 20?

*A.* It might be a little difficult, but not much.

*Mr. Bhargava :* You say that early marriage is more potent than purdah. What is your warrant for saying that?

*A.* That is my impression. I cannot give you figures.

*Q.* Amongst the Muhammadans in Lucknow marriages are later than amongst the Hindus, and yet the mortality amongst Muhammadans is higher. How do you explain it?

*A.* It is because there is strict purdah amongst Muhammadans.

*Q.* Then do you not think that purdah is more potent?

*A.* You cannot take Lucknow only as the criterion. Also there are other factors, especially poverty.

*Q.* Is the average Muslim poorer ?

*A.* Yes.

*Q.* Supposing there is early marriage. Do you think that early consummation by itself will shorten life ?

*A.* I think it will.

*Q.* Do you ascribe tuberculosis to early marriage ?

*A.* I do not think tuberculosis is increasing now.

*Q.* Hysteria ?

*A.* I have no experience about hysteria.

*Mr. Kanhaiya Lal :* Can you tell us whether infantile mortality is higher amongst the Muhammadans than amongst Hindus ?

*A.* My figures do not differentiate between Hindus and Muhammadans.

*Q.* What is the safe age which you would recommend for consummation of marriage with due regard to the health of the mother and the progeny ?

*A.* 18. But as a compromise I would recommend 16. I would not go lower than that.

**Written Statement, dated 13th August 1928, of Rai Bahadur THAKUR MASHAL SINGH, ex-M.L.C., President, Arya Pratinidhi Sabha, United Provinces, Hardoi.**

1. So far as the masses are concerned there is complete ignorance of law but the literate classes are dissatisfied and want a further advance on the present state of law.

2. The present law has effected very slight change in the conditions existing before the amendment of law. To bring about any appreciable change in the moral and material conditions the law must be further amended. I take it that one of the reasons for raising the age of consent was to safeguard young girls from the effects of early cohabitation and motherhood. The present law barely touches the fringe of the problem and is practically ineffective.

3. No. The crimes of seduction or rape are not frequent in this part of the country. In my opinion the amendment of the law made in 1925 has not succeeded appreciably in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes.

4. No. It has not been effective. The amendment has not served to protect young girls from cohabitation with husbands nor has it postponed the consummation of marriage nor is it a factor in the postponement of marriage beyond 13. It has certainly served to draw public attention in the desired direction of raising a discussion on the question.

To my mind the only effective step to protect married girls against cohabitation with husbands would be to prohibit marriages below a prescribed age.

5. Girls generally attain full puberty at the age of 15 in this part of the country. No difference exists between different castes; but girls of upper or well-to-do classes generally attain puberty earlier than the girls of poor classes.

6. It is very difficult to say at what age cohabitation begins among any class or classes of people.

As a rule cohabitation begins soon after marriage although cases occur where it begins before puberty. No such cases come to court.

7. The early consummation of marriage is not due to any religious injunction.

At least I am not aware of it. It is due to vicious social convention and has no religious sanction or authority behind it.

8. The Goana is usually performed in this part of the country but it does not coincide with, nor is it always anterior to, the consummation of marriage. The attainment of puberty is seldom the consideration for fixing the ceremony of Goana which is done on considerations of personal convenience either within one year of marriage or two years after marriage but within three years of marriage, as it suits particular families.

9. The answer of the first part of the question is in the negative. In my opinion consummation of marriage should take place at the age of 16, that is, three years after the beginning of menses. Before the age of 16 girls are generally too tender to bear the consequences of motherhood and produce weak and unhealthy children.

10. The realisation of consequences of cohabitation would be difficult for a girl of less than 16 years of age and such a girl would be really incompetent to give an intelligent consent.

11. I have no professional experience but effects of early consummation of marriage are too visible to be passed unnoticed even by a casual observer.

12. Yes. This is my view.

13. The educated opinion is certainly growing that the age of consent in all cases must be further raised although they think that unless the minimum age of marriage is prescribed by the statute, a mere raising of the age of consent would not be effective.

14. Illiterate classes of women do favour, owing to their ignorance, early consummation of marriage.

15. There are great difficulties in determining the ages of girls in connection with offences under section 376. I would recommend a better and more reliable agency for registration of births.

16. If the age of consent is raised to 16 years the difficulty in determining the age as well as the margin of error will be materially reduced and minimised.

17. In case the age of consent is raised appreciably, say up to 16 years, it would be necessary to prescribe much lighter punishment for marital offences than for extra-marital offences. Heavy fines rather than imprisonment would be more suitable for marital offences, at least for some time until the people are familiarised with the state of law. The present severe punishment for marital offences greatly hinders the discovery of the offence and is a sufficient motive for all concerned to suppress it in any manner they can.

18. I would suggest *in camera* and speedy trials so far as offences within the marital state are concerned.

19. I have no suggestions to make.

20. No. In my opinion personally as well as in the opinion of the educated classes generally in this part of the country the fixing of the minimum age of marriage by legislation would be more effective than penal legislation fixing a higher age of consent for marital cases.

21. I would not rely on social propaganda only to secure the object in view but would also have the aid of law. The social education has disclosed the necessity of calling the legislation to its aid. It has certainly prepared the ground for legislation but is helpless in many cases without a statutory authority behind it. The social propaganda would still be carried on and would act as a great help towards the exposure of such offences if the law is brought in line with the view of the social reformers.

Mere social pressure has failed and would in future also fail to check the growth of abuse which the committee has in view.

**Oral evidence of Rai Bahadur THAKUR MASHAL SINGH, President,  
Arya Pratinidhi Sabha, United Provinces, Hardoi.**

(Lucknow, 21st January 1929.)

*Chairman :* What is this Arya Pratinidhi Sabha ?

*A.* It is the representative Assembly of the Arya Samajists of this Province.

*Q.* You say it is difficult to say when cohabitation begins amongst people, but there are cases in which it begins before puberty. Do you think there are many such cases ?

*A.* I cannot say definitely.

*Q.* Do you think there are many cases of consummation of girls below 13 ?

*A.* I think so, because when marriages take place early—and after marriage there is no restriction—I think there will be many cases.

*Q.* In this part of the country is the practice very strict, and is it a fact that the girl does not go to the house of the husband until she has attained puberty ?

*A.* Goana means only going a second time, and it has nothing to do with consummation.

*Q.* You say that you want a minimum age of marriage to be fixed. Do you think that would be more effective than the age of consent law ?

*A.* Yes.

*Q.* What age would you recommend ?

*A.* Minimum 16 for girls, and 25 for boys.

*Q.* In your part of the country is the orthodox section larger or is the advanced section more ?

*A.* The majority are orthodox.

*Q.* Do marriages take place early amongst the orthodox people ?

*A.* Yes.

*Q.* Have you come across girl mothers at 13, 14 or 15 ?

*A.* Yes.

*Q.* How many girl mothers of 13 have you come across during the last 2 years ?

*A.* Though in my whole life I might have seen many, during the last 2 year I might have seen only one or two.

*Q.* Do you think that such cases are very rare ?

*A.* I do not know, because I do not belong to a profession which will bring me in close contact with cases of that kind.

*Q.* You are a Zamindar, and you are likely to know a great deal about your tenantry and other people.

*A.* But I do not visit the houses of my tenants.

*Q.* Do you think that girl mothers of 13 are common ? Have you heard of many cases ?

*A.* Not many.

*Q.* Can you tell the condition of the girl mothers of 13 to 15 whom you might have seen ?

*A.* They are emaciated, and not of robust health.

*Dr. Beaton :* Are you talking of poor girls, or are they people in good circumstances ?

*A.* Even in well-to-do families the girl mothers are always poor in health.

*Q.* What class of girls have you seen ?

*A.* Hindus generally. I have not seen Muhammadan girls. I have seen many cases of Kshatriyas because I am myself a Kshatriya.

*Mr. Mitra :* Would you be prepared to start with 14 for the age of marriage as a beginning ?

*A. No.*

*Q.* There will be orthodox opposition, but if it is fixed at 14, it will be less. For the time being would you therefore begin with 14 ?

*A.* I think 16 should be the minimum.

*Q.* Are you prepared to make exemptions for very hard cases, or for the orthodox people ?

*A.* Yes ; if there be such cases.

*Q.* What punishment would you suggest for an infringement of the marriage w?

*A.* I think fine will do.

*Q.* It has been suggested that if it is fine only it will be considered as an item of marriage expenditure in the case of the rich people, and it will affect only the poor.

*A.* It is true, but in the beginning I think it should be fine only.

*Q.* Whom would you like to be punished for infringement ?

*A.* The parents and the priest as well.

*Q.* Would you punish the mother ?

*A.* If the father is not alive, the mother might be punished.

*Q.* What age would you have in extra-marital cases ?

*A.* 18.

*Mr. Mudaliar :* What punishment would you prescribe in marital cases when the husband is guilty ?

*A.* Fine only.

*Q.* Supposing the girl is only 9 years old ?

*A.* In that case I would have imprisonment.

*Q.* At what age would you distinguish between the penalty ?

*A.* I think after 13 fine only will do.

*Q.* What is the maximum amount of fine you would fix ?

*A.* I have not considered over the matter, but I think it may be Rs. 500.

*Q.* Would you suggest making the offence cognisable ?

*A.* If we could avoid the police, I think some other agency should be employed.

*Q.* What agency would you recommend ?

*A.* I cannot say that.

*Mr. Bhargava :* In marriages in U. P. how many priests are there at the time of the ceremonial ?

*A.* There is one chief priest, and there are other priests who help.

*Q.* Is it not generally the family priest who performs the marriage ?

*A.* Yes.

*Q.* If the family Purohit is illiterate, is not a pandit brought from a local place to officiate ? If so, is that pandit supposed to know the age of the boy or girl ?

*A.* No.

*Q.* Then they simply act according to the dictates of the chief priest. Then why do you want them to be punished ?

*A.* I mean by the chief priest the priest who consults the horoscopes. That priest should be punished, and not the priests who officiate at the marriage.

*Q.* Do you not realise that this astrologer is an unconcerned person who does not necessarily attend the marriage ?

A. The general custom here is that the priest of the family is consulted. If he is illiterate or very deficient in astrology he goes to the superior pandit. But the celebration of the marriage is generally performed by the family priest.

Q. From what you say it appears that here the family priest has knowledge of the boy and the girl. Supposing it is different in different provinces, are you in favour of punishing the priest?

A. Certainly not in all cases, unless the priest happens to have knowledge.

Q. What about the Muhammadans?

A. I do not know anything about Muhammadans.

Q. You said that you are in favour of granting exemptions in certain cases. Do you realise that in a very large number of cases, say about 40 or 50 per cent. of the people celebrate marriages on account of a religious fear or religious notion that the girl should be married before puberty, and if you allow exemptions in these cases, do you want all such cases to be exempted?

A. I do not think such exemptions should be granted. Only in rare cases exemptions should be granted.

Q. For instance, would you allow exemptions in hard cases where it will be difficult to find a suitable bridegroom if the girl were not married at the time?

A. Yes.

Q. Amongst Kshatriyas in the villages do marriages take place early?

A. Now-a-days marriages amongst them are performed at the ages of 13 and 14.

Q. Since what time has this change come in?

A. During the last 20 or 25 years the age has been raised.

Q. Is there any religious notion about marriages before puberty, or is it only custom?

A. It is custom, but even in religious books it is said that marriages should take place only after 16.

Q. As an Arya Samajist, do you believe that in the Vedic times girls were married only after they were fully developed?

A. Yes.

Mr. Kanhaiya Lal: Do you recommend 16 both for marriage and consummation?

A. Yes; the law of consent is not effective, and therefore both the age of consent and marriage should be equal.

Q. If there is no consummation law, then marriage may proceed, and consummation might follow?

A. Yes; that is why I would have both.

Q. Supposing the age of marriage is fixed at an age which is after puberty, do you think there will be much opposition from the orthodox community?

A. Yes.

Q. Do you not think that amongst the lower classes it is common for marriages being celebrated between 5 and 10?

A. Amongst the lower classes in my district I have known marriages taking place at the age of 5.

Q. Do you not think therefore that the law will work more smoothly if we were to begin at 14 for the present?

A. I do not think so.

Q. Would you not recommend that as a first step it might be fixed at 14, and later on it might be raised?

A. No.

Q. Supposing we have a law fixing the minimum age of marriage and also a law of consummation, then would you recommend a system of reporting of marriages

to a prescribed authority giving the names and the ages of the marrying parties so that we might know where the law is being infringed ?

A. Yes ; I would recommend it.

Q. To whom would you entrust this work ?

A. In the villages the village Patwaris can do this work.

Q. In the Municipal areas ?

A. It can be done by the Municipal Boards.

Q. Do you not think that the Patwari will be over worked ?

A. I do not think this work will be much.

Q. Would you recommend a department of registration for marriages, the Registrars to be remunerated from fees levied from the reporting parties ; and the fee might be fixed at one rupee or eight annas.

A. It is a better agency no doubt. I do not think anybody will grudge the payment of a small sum.

Q. Would you further recommend that at the time of registration, a marriage certificate should be issued to the reporting individuals so that they might keep it for purposes of record ?

A. It would be still better.

Q. Similarly in the case of births, would you be in favour of a grant of free birth certificates to the reporting parties ?

A. Yes ; for purposes of record. I think one agency can be entrusted both with this as well as the registration of marriages.

## Oral evidence of SHAFI-UL-MULK ABDUL HAMID, Lucknow.

*Lucknow, 22nd January 1929.*

Vernacular.

*Chairman :* You are practising at Lucknow ?

A. Yes, I am practising for the last 20 years. This is my ancestral business.

Q. Is there a Unani school here ?

A. There is a Unani Tibbia college aided by Government and I am the secretary of the college.

Q. You are also a member of the Indian Board of Medicine ?

A. Yes.

Q. What do you think is the suitable age for girls to become mothers ?

A. I think if consummation takes place six months after the attainment of puberty there is no injury. She is fit to become mother also.

Q. What is the usual age of puberty here among the Musalmans ?

A. It is between 13 and 14.

Q. Do a large number of girls both among the Hindus and Mohamedans attain puberty at 13 or at 14 ?

A. In more cases puberty is attained at 13.

Q. You think before attaining complete 13 years a girl can become mother without injury to herself or to her children ?

A. Yes.

Q. Have you seen girls below 13 becoming mothers ?

A. I have seen several mothers before 14 complete. Below 15 they are common.



*Q.* Have you seen many cases of girl mothers at 15 ?

*A.* Yes.

*Q.* Do you think injury is caused to girls below 13 complete as a result of consummation even when they do not become mothers ?

*A.* Yes.

*Q.* Do they receive any injury as a result of consummation before 14 complete ?

*A.* No. There may be injury in certain cases before 13 complete.

*Dr. Beadon :* During the last three or four years how many cases have you seen of injury caused to young girls as a result of early consummation or early maternity ?

*A.* 25 or 30.

*Q.* What happened to them ?

*A.* I saw two cases contracting consumption and in the other there was ulceration of the womb. The age of marriage in these cases was about 12.

*Q.* Have you seen any other cases below 15 or 16 having suffered ?

*A.* No.

*Chairman :* Is there anything in the Unani books as to what is the suitable age for marriage of girls ?

*A.* In Tibi books it is stated that marriage may take place after puberty.

*Q.* What is the age of puberty given in these books ?

*A.* It varies in different countries. In hot climates it is 11 and in cold climates it is later and in the tropical climates it is between 12 and 13 and India is considered to be a tropical climate.

*Q.* We have been told that the present law of consent is ineffective. There are two alternatives—either to raise the age of consent or to fix an age for marriage because we have been told that marriages and consummations take place before 13 complete and mothers and children die or they are weak. Are you in favour of a law ?

*A.* No. I think if there is a law there will be difficulties. Suppose the marriage or consent law is 14 and a girl attains puberty at 13, she will not be able to marry before the prescribed age. I think it should be done by social propaganda. I think the law of age of consent is ineffective.

*Q.* Then why not have the marriage law ?

*A.* The public is not prepared for it.

*Q.* When do marriages take place among the Mohamedans ?

*A.* They are almost always after puberty—between 14 and 15.

*Q.* Can you suggest any method that consummation may be stopped before 13 ?

*A.* I think there should be registration of marriages and the pandits or the priests should be responsible to see that when a girl is married she is not below 13.

*Q.* But until you make a law they cannot do anything. The age of consent, you say, is not effective because cases do not come to light ; what other measures should be adopted to check this evil ?

*A.* If there is a law they can say that a certain girl has attained the prescribed age though she may be below the age.

*Q.* If there is a registration of marriages and a free birth or marriage certificate is granted at the time the birth or marriage is reported, the age can be ascertained.

*A.* Yes.

*Q.* Supposing you make a marriage law at 13, what is the difficulty ?

*A.* If a girl attains puberty she can be married or supposing there is an old man and he wants to see his daughter settled in life before he dies, he will not be able to do so. I would like marriages before puberty to be penalised.

*Q.* Have you seen a girl becoming mother at 17 or 18 ?

*A.* Yes.

*Q.* Have you noticed that her health is better and the health of her children is better than the children of a girl mother of 13 or 14 ?

*A.* There is difference between the two. In the case of the older mother the children will be healthier.

*Q.* At certain places puberty is attained at 11, then do you think that she is fit to become a mother at 12 ?

*A.* Yes.

*Q.* At what age do you think a girl is fully developed to become a mother ?

*A.* I think the age of marriage should be fixed between 13 and 15 and marriages below 13 penalised.

*Mrs. Nehru :* Do you think it is against the religious injunction to fix an age for marriage ?

*A.* I cannot say anything from the religious point of view.

*Q.* You want marriage after puberty—how will you prove that a girl has attained puberty or not ?

*A.* The doctors can say whether a girl has attained puberty or not.

*Q.* Don't you think it will be indefinite to fix the age of puberty ?

*A.* If marriage age is fixed there will be difficulties. I am not in favour of it.

*Q.* Supposing there is a marriage law at 14 and suitable exemptions are provided for hard cases ; that is, a man should apply to the magistrate that he wants to marry his daughter for certain reasons before the prescribed age and he may marry after getting the sanction of the magistrate. Do you think that will be all right ?

*A.* That is a good idea but there will be practical difficulties. If a man applies for sanction and it is a case of property being involved the relatives will raise objection and the result will be that sanction will be refused.

*Q.* But the objection that you raise also applies to fixing the age of puberty ?

*A.* I think fixing the age of puberty is comparatively easier than fixing the age of marriage at 14 with exemptions. I know it from my experience that it is very difficult, especially for poor people, to get sanction.

*Q.* But the number of cases who will apply for exemptions will go on decreasing as the age rises by education.

*A.* Then I think it should be done by propaganda and not by the enactment of a law.

*Q.* Several witnesses told us that they want to marry their girls at 15 or 16 but on account of social ostracism and custom they were forced to marry at 7 or 8 and unless there is a law social propaganda will have no effect. The hands of such people will be strengthened if there is a law.

*A.* There are advantages in fixing an age for marriage but there will be greater disadvantages. I am looking from the point of view of the poor people who will be put to great difficulty.

*Q.* But there are pre-puberty consummations in a large number of cases. Don't you think such cases should be stopped ?

*A.* Yes, that is a sin.

*Q.* And you cannot fix the age of puberty. Therefore unless there is a marriage law, it will be difficult to check pre-puberty consummations.

*A.* Generally puberty is attained at 13. I think one age should not be fixed but if you say that marriages should take place between 13 and 15, it will be better.

*Q.* What is the minimum age that you fix ?

*A.* 13.

*Mr. Shah Nawaz :* Supposing we provide that if there is a question of puberty a man may apply to the village panchayat who may grant exemption, will that work ?

A. I think the law should be that a man after obtaining a certificate of the attainment of puberty may marry his daughter.

Q. Then certificate will have to be obtained from a lady doctor for which a fee of Rs. 16 may have to be paid. And when menses appear for the first time it is not regular till after 6 months.

A. Free certificates should be granted and the word used should be puberty.

Q. In Bengal there are pre-puberty consummations of marriages in 80 per cent. of cases and it has been suggested that unless there is a marriage law these cannot be stopped. You do not want maternity at 13. I may tell you that in Turkey there is a marriage law at 15 and in Egypt it is also 15. If a law is enacted it will be for the benefit of the people?

A. I cannot suggest anything. I cannot say that it will be considered an interference with religion, but if the age of puberty is fixed it will be acceptable.

Q. If there is marriage law at 13, do you think it will be accepted by the people?

A. Yes.

Mr. Kanhaiya Lal: It is stated in Ayurvedic books that if a girl becomes a mother before 16 she will suffer and the child will be very weak or it will die. Is there anything similar in the Tibi books?

A. No. There is nothing about age. It is only stated that if the girl is physically weak, the children born will be weak. It all depends on the physical development and not so much on age. It would be better if the girl is sent to her husband's house one year after puberty but that should be done by social propaganda and not by law.

Q. In India there is illiteracy and in many places girls are married at 10 or 11 and are sent to husbands' houses irrespective of the fact whether they have attained puberty or not. The statistics show that 25 per cent. of the children die. Don't you think it is our duty to decrease infant mortality and allow girls to become strong.

A. The number of those people who marry early is now fast decreasing.

Q. It means that very few people will be affected by the law?

A. Yes, but there will be difficulties.

Q. Are you in favour of registration of marriages giving the names of the marrying parties and their ages so that the authorities concerned may know where the law is being broken or is likely to be broken?

A. Yes, I am in favour of registration of marriages.

Q. To whom should reports of such marriages be made?

A. Maulvis and pandits should be appointed as registrars for the purpose.

Q. And they should be paid some remuneration out of fees realised from registration?

A. Yes.

Q. Then you will have no objection to fixing the age of marriage at 13?

A. It should be in the beginning of 13th year.

### Written Statement of Mr. ANIS AHMAD ABBASI, B.A., Editor, Daily Haqiqat, Lucknow, dated the 13th August 1928.

As I was out of the station for the last two weeks hence I could not prepare my memorandum as I desire at the very short time at my disposal. I desired very much to explain to you the Muslim point of view as I have studied in the pamphlets written by some of the well-known Muslim theologians and I am convinced that the Islamic law is not opposed to the proposed legislation. If the Committee will ask me to give oral evidence I hope to be able to convince the members that the Mussal-

man can have no legitimate objection to the proposed raising of the age of consent from 13 to 14 years.

Before answering the queries contained in your printed questionnaire I should like to say at the very outset that from my personal experience I am convinced that child-marriage is a great evil for India which has to be eradicated at all cost. Marriages contracted in the immature ages of the girl-wives have almost invariably produced deplorable results for the young couples either physically or socially.

Personally I would, therefore, welcome any legislation which is meant to put a stop to this evil practice and impose at least 15 years age limit for girls and 18 years for boys, instead of 14 and 18 as suggested by some members of the Legislative Assembly. In any case the evil of early marriages has to be stopped by means of legislation. Volunteer social and religious reform associations cannot be trusted to protect young wives from premature cohabitation. The significance of this age-long evil may be measured by the estimate that in India each generation sees the death of more than three million young mothers in the agonies of child-birth. For many years to come our social reformers cannot acquire such influence over the illiterate masses as to obtain the desired result by means of persuasion. Hence the necessity for legislation.

1. Sections 375 and 376 of the Indian Penal Code have been absolutely ineffective. Very few cases, if any, have come to my notice where this law has been applied effectively. On the other hand this law is being violated daily and the police is quite powerless to interfere in such cases. Those who desire to reform the society of this evil are, therefore, entirely dissatisfied with the present law contained in the Indian Penal Code.

3 & 4. As in other parts of India so in my province of Oudh crimes of seduction and rape are quite frequent. I do not see any appreciable effect of the law of 1925 in preventing or reducing cases of rape and seduction or in postponing the consummation of marriages or in putting off marriages beyond 13. It is for lawyers to suggest some amendment to the existing law so as to make it effective.

5. 14 and 15 is the usual age at which girls attain puberty in Oudh. This is applicable to all classes, castes and communities. In exceptional cases, due to their physical constitution, girls attain puberty between 12 and 14.

7. So far as the Mussalmans are concerned, the Islamic law has neither forbidden marriages before puberty nor has it made early marriage obligatory upon the followers of Islam. In this connection I may refer to a pamphlet written on the subject by Maulana Inayatullah Sahib of Firangi Mahal, Lucknow, who is considered an authority on Islamic law. I have read this pamphlet and I can explain its contents to the members of the Committee. In a way he has supported the proposed legislation.

9. This is a question for physicians and doctors to answer but from my own personal experience, I can say that the consummation of marriage for girls before 16 is not quite desirable either physically or socially.

10 & 11. Not before the age of 15 would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences.

I have seen many cases of permanent physical injury to girls married in tender ages which either prejudicially affected their progeny or led gradually to death due to tuberculosis or some other lingering disease.

Fortunately among the middle class Mohamedans cases of early marriage (before 15 years) are very rare. This is largely due to the teaching of Islam, which has not made early marriage obligatory for its followers.

13. As far as I have been able to gather from my experience as an Editor, I can say that the opinion of the educated classes is strongly in favour of raising the age of consent to 14 years.

15. It is of course very difficult to determine the real ages of girls whenever there is any infringement of sections 375 and 376.

I would suggest that for the Mussalmans either a paid Kazi or an Honorary Magistrate with powers of a Kazi should be appointed for every city and big town, and he alone should decide such cases. He should be authorised by law to grant marriage certificates and no marriage should be allowed without his certificate.

17. In case of extra-marital offences, whipping will be the most suitable punishment, and in case of marital offences imprisonment for one year (simple) and a fine up to Rs. 500 will be quite deterrent.

18. In case of offences within marital state, they should be incognisable by the police and the trial should be by summons, but the offences without marital state should remain cognisable by the police, and warrants may be issued for the arrest of the offender. More than this public opinion would not tolerate.

20. I think legislation for fixing the minimum age for marriage would be more effective than penal legislation fixing a higher age of consent. But in exceptional cases the Kazi should be authorised to permit marriages, with proper guarantees that the consummation of marriage will not take place before the age of 15.

21. From my personal experience I am convinced that it will take a very long time before the desired reform can be effected by means of education and social propaganda. Penal legislation is, at present, the only remedy for this evil.

### **Oral evidence of Mr. ANIS AHMAD ABBASI, B.A., Editor, Daily Haqiqat, Lucknow.**

*Lucknow, 22nd January 1929.*

**Chairman :** Are you the Editor of the paper called " Daily Haqiqat " ?

**A.** Yes.

**Q.** How long has this paper been in existence ?

**A.** About 10 years.

**Q.** Are you connected with any reform movements amongst the Muhammadans or any other communities ?

**A.** I am not particularly connected with any reform movements but as a Journalist I am interested in the reform movements.

**Q.** You have referred in your statement to a pamphlet of Maulana Inayatullah Sahib. What is the pamphlet about ?

**A.** The pamphlet tries to prove that early marriages are not obligatory amongst the Muhammadans but they are permissible.

**Q.** Are you also of the same opinion ?

**A.** I agree with him, although I know that conservative opinion amongst the Muhammadans doesn't agree.

**Q.** You seem to think that there is no mandate about prohibiting or laying down that at a certain age marriages should not or should be performed ?

**A.** There is no such mandate.

**Q.** You seem to think that the pamphlet in question is also to the same effect ?

**A.** Yes.

**Q.** In your first paragraph you say that you will be able to convince the members that the Mussalmans can have no legitimate objection to the proposed raising of the age of consent from 13 to 14 years. What is it that you will like to explain to us in connection with this ?

**A.** I understood from the pamphlet of Maulana Inayatullah Sahib that so far as the Mussalmans are concerned, if any objection comes from the Mullahs and Ulemas to the raising of the age from 13 to 14, it cannot be tenable.

Q. Do you mean that they can have no objection about the raising of the age of consent or about the marriage age ?

A. I am talking about the age of consent, but I say that there is very little difference between the age of consent and the age of marriage.

Q. You seem to think in your answer to question No. 20 that we should rather have a law fixing the minimum age for marriage which you think would be more effective than the age of consent law.

A. Yes.

Q. You also say that you want exceptions to be provided for with a proviso that in those cases marriages shall not be consummated till 15.

A. Yes.

Q. Do you want the age of marriage also to be fixed at 15 ?

A. Yes.

Q. You have stated in para. 15 that you would have a paid Kazi or an Honorary Magistrate authorized by law to grant marriage certificates and no marriage should be allowed without his certificate. Do you mean thereby that the previous sanction of the Kazi should be obtained before a marriage could take place ?

A. Yes.

Q. You have suggested that for the Mussalmans either a paid Kazi or an Honorary Magistrate with powers of a Kazi should be appointed for every city and big town and he alone should decide such cases. That is to say you want the right to be given to the Kazis so far as the Muhammadans are concerned. Is that your idea ?

A. Yes. I say that if the right is entrusted to the Kazis instead of to the Magistrates, they can satisfy the conservative Muhammadan opinion.

Q. Do you think that one man will be able to deal with all the marriages that are going to happen in 12 months ?

A. I think he may have one or two assistants. If there is a big city, he may have some more assistants.

Q. Would you like some registration fee also ?

A. Very ordinary registration fee only will do.

Q. Supposing there is a breach of this law, you want it to be tried by ordinary courts. Is it not so ?

A. Yes, it may be reported by the Kazi, but the case should be tried by the ordinary courts.

Q. Would you like the cases of exemptions also to be tried by the ordinary courts ?

A. Yes.

Q. You have given 14 and 15 as the age at which girls attain puberty in Oudh and in exceptional cases only between 12 to 14. Is this amongst the Muhammadans or is this also amongst the Hindus ?

A. This is amongst the Muhammadans.

Q. At what age do Hindu girls attain puberty in Oudh ?

A. Generally the age of puberty amongst them is between 14 and 15.

Q. Is that so ?

A. That is my experience.

Q. You say that in answer to Question No. 1 that this present law is being violated daily and the police is quite powerless to interfere in such cases, and hence there is a great dissatisfaction. Is this right ? Is the law being violated every day ?

A. Almost every day it is being violated.

Q. Have you any reason to believe that before a girl is 13, there are many consummations of marriages that take place ?

A. Of course.

Q. Do such cases of consummation take place amongst the Muhammadans ?

A. Amongst the low class Muhammadans the breach of the law is common but amongst the middle class Muhammadans there are very few breaches of this sort.

Q. Have you any knowledge about the Hindus or are you only talking about the Muhammadan community ?

A. I am talking only of the Muhammadan community.

Q. Amongst the lower class Muhammadans can you say that in a large percentage of them, consummations take place before the girl is 13 ?

A. I would say that in more than 50 per cent. of them consummations take place before a girl is 13.

Q. Do you think that this present law is known amongst the lower class Muhammadans ? Is this law consciously broken by them ?

A. I think it is unconsciously broken by them. I think this law is very little known amongst those lower class Muhammadans.

Dr. Beadon : You say in your first page that the significance of this age-long evil may be measured by the estimate that in India each generation sees the death of more than three million young mothers in the agonies of child-birth. Would you mind letting us know from where you got these figures ?

A. I remember to have read this figure in some papers but I have never verified it.

Q. In your answers to Questions Nos. 10 and 11 you say you have seen many cases of permanent physical injury to girls married in tender ages which either prejudicially affected their progeny or led gradually to death due to tuberculosis or some other lingering disease. Would you mind telling us at least the particulars of one or two cases that you know of within the last three or four years ?

A. I know that there are several cases where girls married at tender ages are suffering from hysteria. I remember a recent case where a girl of 12 was married to a young man of over 26 and she is still suffering from hysteria and other diseases.

Q. How long after marriage was she attacked by hysteria ?

A. About a year after marriage.

Q. Do you know of any other cases besides these cases of hysteria and tuberculosis ?

A. I had another case in my family where a girl was 12 or 13 old and she was attacked with hysteria which developed into tuberculosis and the girl died.

Q. Barring these cases do you know of any other cases of definite injury as a result of cohabitation ?

A. No, I don't know.

Mrs. Nehru : What is your reason for suggesting that for the Mussalmans either a paid Kazi or an Honorary Magistrate with power of a Kazi should be appointed for every city and big town, and he alone should decide such cases and not an ordinary court ?

A. I think the conservative Mussalmans will not accept any other arrangement except this. Only to satisfy the conservative Mussalmans, it will be better if a Kazi or an Honorary Magistrate is appointed for this purpose.

Q. Is it for the age of consent law that you have made this suggestion ?

A. For both.

Q. But under the existing age of consent law the cases are triable by ordinary courts. Why has the Mussalman opinion not been so far against such courts ?

A. I think the Mussalmans very little know that there is a law about the age of consent. That is why I was just speaking that cases of the breaches of the law occur but they don't come to light. I see the violation of the age of consent law every day but I never find the police *challenging* a man.

Q. Do you want to raise the age of consent also ?

A. I don't make any difference between the age of consent and the age of marriage.

Q. Would you like to increase the age in extra-marital cases ?

A. Yes.

Q. What would you put it at ?

A. I think 18 is quite reasonable.

Q. Supposing in intra-marital relations the age of consent also is fixed and there are breaches, would you like to have the same tribunals to try these cases ?

A. Yes.

Q. Why is it that the Mussalman opinion considers these tribunals better than the ordinary courts ?

A. I say that the Mussalman opinion is totally opposed to any law but so far as the uneducated Mussalmans are concerned, you can conciliate them only by appointing Kazis.

Q. You have also suggested Honorary Magistrates with powers of a Kazi to be appointed in every city ?

A. I have suggested these courses because they don't want this matter to be put into the hands of the officials.

Q. Then you have also suggested as punishment one year's simple imprisonment and a fine of Rs. 500 for offences in intra-marital cases. Have you suggested this punishment regardless of the age of the girl ?

A. Below 12, I would keep the punishment as it is now and above 12, I have suggested the punishment as above.

Mr. Yakub : Do you think that there are instances where the Khalifas themselves had taken certain measures for the welfare of the Mussalmans which were not especially enjoined by the Quran or by the Hadis ?

A. I cannot say that, but I think there are such instances.

Q. Do you think that the Mussalmans will have no objection to any law fixing the minimum age of marriage if the trial of such cases is entrusted to Mussalman Magistrates or Judges ?

A. I think that so far as the conservative Mussalmans are concerned, they will probably be not satisfied. Even in that case they will object to any law but in general all educated Muhammadans can be conciliated.

Q. Do you think that the educated Mussalmans would be satisfied if a special matrimonial court is instituted with one stipendiary magistrate or a Judge and two non-officials to be associated with him one of whom may be a Mussalman ?

A. Yes.

Mr. Kanhaiya Lal : Will you recommend the registration of all marriages, that is to say, reports to be made to the prescribed authority giving the names and ages of the marrying parties so that this might be helpful in finding out cases of breaches of the law ?

A. I think there must be a register of marriages.

Q. Who should be the authority to register these marriages ? Do you want the Municipal Boards in city areas and District Boards in rural areas to do this work ?

A. I cannot speak about the non-Muslims but about the Mussalmans I have already suggested that there must be a Kazi for this purpose.

Q. Suppose we have a common register both for Hindus and Mussalmans i.e., we appoint non-officials as Registrars so that both the Hindus and Mussalmans can report to them, would that serve the purpose ?

A. This system will of course be preferable but, as I have said, to satisfy conservative Muslim opinion, we must have a Kazi for this purpose.



Q. I quite understand this. You know that for births and deaths we have a common agency to record the births and deaths of Mussalmans and Hindus. Why not let the same agency do this work also ?

A. When there is a Kazi why should he not be a Registrar ?

Q. How would you pay these Registrars, whether he is a Kazi or an outsider ?

A. Only an allowance will be sufficient for them and this should be paid by the State.

Q. You know the practice in some places is that they charge for registering each marriage one rupee and that one rupee goes to the Registrar as his fee in place of any salary.

A. This system is also prevalent in Oudh and in United Provinces.

Q. I am speaking about the keeping of records of marriages.

A. The Kazis also keep the records.

Q. We want to have a compulsory system of registration of marriages. Would you like to have a fee or would you not like to have a fee ?

A. Yes, I would like to have a fee being paid to the man who keeps the register of marriages.

Q. Would you recommend that in all these cases a free marriage certificate should be granted to the marrying parties by the Registering Authority so that it may be kept by them as a record ?

A. Yes.

Q. Now in the case of births, do you also recommend the grant of a free birth certificate to the reporting individual so that he may keep it as evidence of the age ?

A. Yes.

**Written Statement of Dr. ALICE L. ERNST, M.D., Women's Union  
Missionary Society of America, Ackerman-Hoyt Memorial Hospital,  
Jhansi.**

*(Jhansi, 14th August 1928.)*

As I have but recently returned from a furlough of 2 years out of India, I am not sufficiently informed to answer many of the questions you submitted to me, but my long experience of more than 30 years as a doctor for women and children in India has shown me many ills resulting from early motherhood, and I feel I should contribute any knowledge I possess to the highly desirable object of raising the health level of the women and children of India and through them that of the whole Indian nation.

5. The average age of puberty for Hindus and Moslem girls in this part of the country is between 12 and 13 years, but I have seen it delayed to the age of 16 and 17 years. At the Christian girls' orphanage and Boarding School of my Mission in Cawnpore, the girls menstruate between 13 and 14 years of age.

8. The 'Gaona' ceremony is usually performed in Jhansi. It takes place before the consummation of marriage, and soon after the attainment of puberty; should the latter, however, be delayed, it takes place before it.

9. No. I do not think that any woman should become a mother before the age of 16 years, and marriage should not be consummated until at least 2 years. After the menses have been established even at the age of 16, the bones of the female pelvis have not attained their full development. An immature woman is running a great risk when she becomes a mother, because of physical injuries to herself, and her child is handicapped by a weak body in the start, and with poor nourishment from his immature mother; and with poor care because of her ignorance and inexperience his condition is not likely to improve, and so the mortality among young children is very high in many parts of India.

10. This is difficult to say as much would depend upon the training she had received about matters of sex and morality. Sixteen would be the lowest limit I think.

11. I have seen cases too numerous to mention where the health of very young women was ruined through pelvis inflammations, specific and otherwise, by cohabitation with their husbands. Among them were traumatic cases that required prolonged treatment in hospital. Early and frequent cohabitation, plus early motherhood, plus improper care at the time of delivery, have shattered the health of millions of women in India. So reduced have they become in strength (the purdah system has contributed to this result, too) that they become easy victims to tuberculosis. Many of the children of these mothers meet an early death, and those that survive, have health much below what it should be.

14. After girls have married their parents do not like the responsibility of protecting them at home, so they are glad to send them to their father-in-law's place as soon as possible. Just this week I learned of a case where the marriage had taken place but not the 'Gaona'. A visit from the bridegroom to the bride's home had resulted in her pregnancy, and the mother was in a terrible state of fear saying she would now be blamed, fined, etc., for not protecting the wife from her husband!

As long as the *age of marriage* is not raised I believe the parents of girls will favour as early a consummation of marriage as possible.

21. I would favour strengthening the penal law and at the same time promote social reform by education and propaganda.

I hope that my small contribution will be of some help.

### **Oral evidence of Dr. ALICE L. ERNST, M.D., Women's Union Missionary Society of America, Ackerman-Hoyt Memorial Hospital, Jhansi.**

(Lucknow, 22nd January 1929.)

*Chairman* : What is exactly the function of this Women's Union Missionary Society of America, which is running the Ackerman-Hoyt Memorial Hospital, Jhansi?

A. This is a hospital for women and children. We answer medical calls which we get from the city and from the District. We have got a training school for nurses and midwives.

Q. Do you get in-patients and out-patients?

A. Yes.

Q. How many beds has your hospital got?

A. 50 beds.

Q. Have you any lying-in department?

A. We have a ward for it.

Q. How long has this hospital been in existence?

A. I began the work in 1900. After seven years we put up another building calling it as the Operating Block with a Surgical Ward.

Q. Will you be able to tell us, within the last five years what is the earliest age of the mother that you have inspected in your hospital?

A. 14.

Q. How many are of 14?

A. Not a very great many. Usually we see mothers of 15 or 16.

**Q.** Do you say that you seldom get mothers of 14 ?

**A.** I would not say that. Perhaps they would have commenced motherhood even earlier than 14, but many of them come to us for the third or the fourth time. We get both mothers from Hindus and Muhammadans.

**Q.** Amongst whom early marriage is common ?

**A.** I think early marriage is more common amongst the poor people than amongst the educated people. I can say that it is more common amongst the Hindus than amongst the Muhammadans.

**Dr. Beadon :** In your answer to Question No. 11 you have said that you have seen numerous cases where the health of very young women was ruined through pelvis inflammations, specific and otherwise, by cohabitation with their husbands. Among them were traumatic cases that required prolonged treatment. Now could you give us one or two instances that you know of within the last two years where definite injury has resulted to the girl as a result of early cohabitation ?

**A.** Yes. I have been getting cases infected with gonorrhœa and syphilis.

**Q.** Do you think that these diseases are more damaging in the young women than in the older women ?

**A.** These diseases are more damaging in the young women and of course lead to sterility and premature death.

**Q.** Do not the older women get gonorrhœa or syphilis ?

**A.** I have not noticed syphilis in the older women. I have noticed it in the young women. I have seen young women infected with syphilis even before they are 13. I know a case where a girl was under 13 and she married quite an elderly man and she was badly infected with gonorrhœa.

**Q.** Could you give us one more instance like this where serious injuries have been caused to a girl mother of 13 or 14 ? There is so much difference of opinion that some say that these girl mothers have very easy deliveries and others say that they get very bad injuries and so on. What is your experience about this ?

**A.** I think if the girl is not strong and if she marries a young man, and maternity takes place, the child must be small, her womb must not have been developed and there ought to be serious injuries to her soft parts and generally these injuries occur in the first pregnancy.

**Q.** Do you get a great deal of fistula ?

**A.** We find fistula in the first pregnancy and it is always found in young women under 16.

**Q.** Do you find a great deal of tuberculosis here ?

**A.** Yes. Tuberculosis is one of the greatest problems in India and I think one of the main causes for tuberculosis is early motherhood. I know dozens of cases where young women died during their second pregnancy on account of tuberculosis. Tuberculosis is very common in the second pregnancy.

**Q.** Do you get osteomalacia here ?

**A.** Not very much. Very few cases of osteomalacia we get here.

**Q.** What about the children of these young mothers ?

**A.** The children are very weak, they are poorly nourished and the mother does not know how to feed them and so many of them die.

**Mr. Mudaliar :** How many years have you been in this country ?

**A.** I came in 1899.

**Q.** Do you think the economic position of villages is going up or going down ?

**A.** I am afraid I don't know much about the villages. My work is in towns. I was in Calcutta for six years and afterwards I went to Jhansi because there was no women's hospital there. We get people from villages but I very seldom go to the village.

Q. May I know how long ago this disease of tuberculosis was discovered by the medical profession ?

A. This disease was discovered many years ago.

Q. But so far as the medical profession is concerned, since how many years ago they have actually diagnosed this disease as tuberculosis ?

A. I don't know.

Q. But I suppose since you came to India, you have at least heard that tuberculosis is existing in India ?

A. I have seen it every day.

Q. Do you think that there is more of tuberculosis to-day than there was when you first came to India ?

A. I think so. At least we know more about it.

Q. Do you think there is a great difference between the number of cases among males and females so far as this disease is concerned ?

A. I think this is much more prevalent amongst men than amongst women.

Q. Have you had any experience where the purdah system prevails ?

A. My experience was only in Calcutta.

Q. How far would you attribute tuberculosis to the system of purdah ?

A. Tuberculosis can be attributed to the system of purdah in a very good way because the women don't get fresh air, they don't take exercise and their children also start with a poor physique.

Q. May I take it that this tuberculosis is a very infectious disease ?

A. Yes.

Q. If there is a single case in a family of tuberculosis and he is kept without being treated and everybody mixes with this man, then may I take it that practically every member of the family would get the infection ?

A. Unless some of them happen to be very healthy and lead an outdoor life, they will be affected with tuberculosis.

Q. In that case don't you think that it is a question of secluded life that they lead which is a primary cause for tuberculosis rather than child-marriage.

A. I say that child-marriage makes the mother liable to tuberculosis. When a girl attains puberty it does not mean that she is a woman. She is on the border line between a girl and a woman and if she has the strain of pregnancy and want of nourishment, etc., and she has not attained full physical development, these all lead to tuberculosis.

Q. You were speaking about gonorrhœa and syphilis. What class of persons did you come across in these cases ?

A. Of all classes from Maharajahs and Maharanees to the poorest.

Q. What percentage of the patients that passed through your hands would be suffering from these diseases ?

A. A great many women used to come to us.

Q. Would you put them in hundreds or thousands during your experience ?

A. I will put them very high and many of them were syphilitic patients.

Q. Did you come across these cases in Bengal or are you speaking about U. P. ?

A. I was for six years in Calcutta and then my experience is in Jhansi.

Q. From where do the women contract these diseases ?

A. I think the women contract these diseases from their husbands who contract them from houses where they shouldn't go. For instance I shall give you an instance. I was treating a woman whose husband was a very high official. I suspected what he had, and the woman had to undergo a very serious operation on account of the bad infection she had.

Q. Would you say from your experience of human nature from different countries that there is anything peculiar or abnormal about the state that you found in the provinces in which you were, so far as India is concerned ?

A. I think the sex bar is more prominent in India than it is in other countries because of this early marriage, and because children talk about early marriage. For instance my colleague had under her care a maternity case. Immediately a few days after the childbirth, the mother-in-law of the girl quickly brought the baby out and showed the baby to the male members of her family. My colleague thought that the baby might catch cold and she went to fetch the baby back and those people at that time were talking about the baby's *shadi*. So when women in India get educated and take more interest in general affairs, they will not be thinking about the marriage question.

Q. Have you considered this point of view that in India when men or women talk about marriage, it is something very different from the sexual ideas of what other men or women speak in other countries ?

A. I don't think so. The idea of cohabitation is there.

Q. Surely the mother-in-law wouldn't have talked about the consummation of the marriage to the male members of her family. Perhaps they would be talking about the *shadi* of the child.

A. I think the young children in India talk more about marriage.

Q. I know that this statement has been very often repeated that sexual ideas are very much prevalent here because the marriage talk is so much in India. I want, therefore, to put it to you whether it is your experience that the marriage talk which the Hindus have is entirely different from the sexual ideas of man of other countries.

A. At any rate I think that the marriage talk is not entirely different from the sexual ideas and at least it is one of the points of sexual ideas.

Q. Do you think that there is any violent disparity between the age of puberty in India and in other countries ?

A. I think that the children in India are not taught self-restraint just as the children are taught in other countries.

Q. How do you know that ?

A. When they cry, the mothers give them what they want.

Q. Do you think that in other countries they are taught sexual restraint ?

A. In other matters if they are not taught, they will not be taught sexual restraint also.

Q. This does not necessarily follow. May I put it to you that the idea of chastity at any rate is very widely and very vigorously preached to the children in India, whatever may be the self-indulgence of the man.

A. I am thinking more of the man than of the woman.

Q. Perhaps you are right in a certain way. I was thinking, so far as the idea of chastity is concerned, more of the woman than of the man.

A. I think if women get educated, the marriage will not be looming in front of them in their younger years. If very young girls marry themselves, how can they be expected to bring up their little ones.

Q. In a joint Hindu family you should know that the rule is the mother or the grandmother brings up the child and not the girl as you say. The girl mother is never expected to bring up the children at all.

A. But the society has now been changed and evils have come in the way. I am so glad that India is getting so wideawake of all these things. It is given in the statistics that the average death rate in India is below 22 years, in England it is 46 years and in America it is 56 years, and the Americans say that it is so because they look after their children more, but in India we see children dying more in the first and second year.

**Q.** Do you know that in India they attribute this more to economic reasons than to anything else ?

**A.** I think besides this a good many things play a part.

**Mr. Kanhaiya Lal :** Do you say that early marriage is more common amongst lower classes of Hindus than amongst the lower classes of Muhammadans ?

**A.** Yes.

**Q.** What is the usual age of marriage amongst the lower classes of Hindus ?

**A.** It depends upon their circumstances.

**Q.** Can you say that it is usually below 10 ?

**A.** I am not prepared to say that.

**Q.** What is the usual age of marriage amongst the lower class Muhammadans ?

**A.** They marry their girls below 12, but so far as consummation is concerned it takes place after puberty.

**Q.** What is the safe age that you would recommend for consummation of marriage having regard to the health of the girl and her future progeny ?

**A.** Not less than 16.

**Q.** What is the safe age that you recommend for consummation of marriage having regard to the interests of the girl and her progeny ?

**A.** Not less than 16.

**Q.** The present law fixes the Age of Consent at 13. There is very great difficulty in detecting cases of consummation before the prescribed age. Can you suggest any measures for bringing these cases to light ?

**A.** Firstly you should have the birth carefully registered and also the marriage carefully registered, and then there should be a non-official vigilance committee with one or two lady members appointed both in rural and urban areas. This committee should receive complaints and look into them and bring them to the court if it is found that there is any truth in the matter. I don't think this should be left to the police.

**Q.** Would medical men and women be ready to work on this committee ?

**A.** Anybody having the good of the people at heart would be willing to come forward.

**Q.** How many confinement cases do you have in a year ?

**A.** Last year we had 119 and this year we have already had 20.

**Q.** How many cases are there between 13 and 14 ?

**A.** There are not many. In all my years that I have been in India I have seen two or three cases.

**Q.** Can you say whether the babies of mothers of 14 or 15 are below the normal weight and below the normal size as compared with children of mothers of 16 and over ?

**A.** I could not say that. It is the mothers that have hard time. If the baby were small, they would not have any trouble.

**Q.** But is the baby well developed in all cases or in certain cases ?

**A.** You can't always tell. Circumstances change. The mother may have illness during pregnancy and there may be trouble consequently.

**Q.** But generally speaking would that not be the case ?

**A.** Not if the father is an older man. If the father is young too that might be.

**Q.** If the father were of the same age do you think there will be any difference as regards general physical development or size or weight ?

**A.** I could not say, there would be much.

**Oral evidence of Moulvi INAYATULLAH SAHEB, Arabic School,  
Lucknow.**

(Lucknow, 22nd January 1929.)

(Vernacular.)

**Mr. Yakub :** You are a teacher in the Farangi Mahal Arabic School ?

**A.** Yes. The school is called 'Madrassa Ali Nizamia'.

**Q.** How long has it been in existence ?

**A.** About 25 years. It was started by the late Moulana Abdul Haya Saheb and was revived by Moulvi Abdul Bari Saheb.

**Q.** Religious books in Arabic are taught ?

**A.** Yes.

**Q.** How many students are there ?

**A.** There are 80 or 85 students.

**Q.** The present law is that if a husband cohabits with his wife who is between 12 and 13 he can be punished for two years and if the girl is below 12 the punishment is 10 years or transportation for life. It is now proposed that this age of 13 be raised to 14 or any higher figure as proper protection is not afforded to girls at that age. Would you like such a law ?

**A.** I think it is against the injunctions of Shariat to have such an age fixed.

**Q.** Then what remedy do you suggest to remedy the evils that result from early consummation and early maternity ? You know the children that are born are very weak and the mothers also suffer.

**A.** The proper way is to educate the people and carry on social propaganda. To give any punishment by law will be against the Shariat. The Government and the police should not interfere in the domestic affairs of the people.

**Q.** If you don't give any punishment how would you remedy the evil ?

**A.** Propaganda should be done and I will suggest a punishment of a different kind. For instance a man may not be eligible for standing for the membership of the Council for a number of years, say 10 years.

**Q.** What age would you fix taking into consideration the effects on the health of the girl of early consummation and the fact that after marriage the girl won't be able to continue her education ?

**A.** The doctors should suggest an age below which consummation is dangerous both to the health of the girl and her progeny and that age should be fixed.

**Q.** All the doctors and lady doctors that have appeared for oral evidence have said that 16 is the safe age. Would you agree to that ?

**A.** If that is the unanimous opinion of doctors I would like that age to be fixed.

**Q.** If we fix that age is there not the danger of the girls going wrong ? You know the poor people have to work in the open fields and the girls may fall a prey to some young men.

**A.** Among the higher classes there is not much danger. If there were religious education there would be no such danger, but as there is none at present there is some danger.

**Q.** If we fix the age at 14 do you think there will be danger still ?

**A.** 14 would be quite a good age and there would be no danger.

**Q.** In your 'Risala' you have said that if the interests of the people require that a particular law should be enacted a Muslim king can do that ?

**A.** If there is a Muhammadan ruler he can do that.

**Q.** In his absence ?

A. In the absence of a Muhammadan ruler if the leaders of the community consider that for the advancement of the country and the community a certain measure is necessary which is not prohibited expressly according to the Muhammadan law, that can be adopted.

Q. You know Hazrat Umar levied 'zikat' on certain articles which were exempt during the time of the Prophet and also in the interest of the Muslims he forbade the Muhammadans to purchase lands in Mesopotamia ?

A. Yes.

Q. And that this should not be considered as an interference in religion ?

A. No.

Q. According to Fikah, Koran or Hadis no age is fixed for marriage ?

A. No.

Q. Has it not been laid down in 4th chapter of the Koran that the property of a minor should be returned when the marriageable age has been reached. The word used is 'Izabalaghulnikah'. What is the meaning of that word there ?

A. It means the age of discretion.

Q. And according to Abu Hanifa the age of discretion is 15 for girls and 18 for boys ?

A. Generally the Ulemas consider 15 to be the age both for girls and boys.

Q. According to Hadis the object of marriage is to produce 'Aulad-e-salah'.

A. I do not know if these words are used in any book.

Mr. Shah Nazaz : Do you think consummation before puberty is desirable ?

A. I don't think it is against religion. If the doctor says that there is danger of death or various kinds of diseases it should be prohibited.

Q. In Bengal in 50 to 60 per cent. cases consummation takes place before puberty ?

A. I don't consider that to be something good.

Q. And then you say the husband should not be punished ?

A. I don't think a Muslim should be punished on that account. There should be no punishment of being sent to jail. There should only be fine which should not go to the Treasury.

Q. If the fine is not paid ?

A. There are various other forms of punishments, prescribed in our religious books. The right of franchise may be forfeited, higher stamp duty or higher court-fee may be levied if a girl who was married before the prescribed age sues for dower.

Q. A Musalman may not be able to sell his property to a Bania ?

A. I don't think there is anything of the kind.

Q. Has a Muslim King a right to lay down that a Mohammadan should not marry more than one wife ?

A. Yes.

Q. And if he breaks the law he can be punished ?

A. But he cannot declare that the marriage of a second wife will be invalid.

Q. Can the King say that he will not get Government service ?

A. Yes.

Q. Do you know of any case in which injury has resulted as a result of early consummation ?

A. I do not remember of any case. In my 'khandan' marriage takes place at 14 or 15.

Q. What about the Mohammadans generally ?

A. Among the higher classes the age varies from 14 to 18. But among the poor classes marriages takes place early. I know of a case of a Mohammadan vege-



table seller. A girl of 1½ was married to a boy of 3 years. In my father-in-law's place a boy was born when the mother was 13.

*Q.* And Rukhsat takes place irrespective of puberty ?

*A.* I can't say.

*Q.* If boys and girls are educated do you think early marriage will stop ?

*A.* If English education is given then perhaps it may stop.

*Mrs. Nehru :* Who should decide such cases ?

*A.* The ordinary courts will do that.

*Q.* What do you think about the system of registration of births ?

*A.* Registration of births and marriages should be compulsory. The Qazi will keep the register who will give one copy to the husband and one to the wife and one will be kept in the office and one will be given to the Registrar. The Qazi will be under the control of the District Judge.

*Q.* The Qazi will be paid ?

*A.* A fee of Re. 1-4 will be charged four annas of which will go to the maintenance of the office and one rupee will be given to the Qazi as his salary. Two men will be nominated by the Deputy Commissioner and two by the leaders of the community and two men will be elected by the Mohammadan members of the District or Municipal Board, and they will all form a Board for the appointment of the Qazi. They will recommend the name to the Deputy Commissioner and it will not be possible for the Deputy Commissioner to dismiss him without previously consulting the Board.

### **Written Statement of Mr. RAMESHWAR DATTA, Secretary, Sanatan Dharma Sabha, Rai Bareilly.**

It appears from the questions contained in your letter No. 42 A. C. C. that the legislation regarding the Age of Consent is an improvement upon the provision of Sections 375-6 of the Indian Penal Code. The object in view is to fix the Age of Marriage at a higher limit to achieve the object that was in view in the above said sections of Indian Penal Code. That is the standing law having failed to achieve its purpose Section 376 was introduced and even that failing to prove efficacious more effectual legislation was in demand. There may be more amendments and the age limit may be raised still higher till it reaches the maximum possible. Similarly if those defects that are beyond our power to remedy cannot be expected to be so easily removed by legislation as through social reform and propaganda. Those that seek the aid of law even in those affairs that can be easily undertaken socially are seriously mistaken. This is a very profound religious problem especially for the Hindus where marriage is not a merely physical alliance but sacred spiritual union. This contemplated legislation is liable to excite serious agitation in the Hindu community, for the standing laws as embodied in the Indian Penal Code are enough and whatever may be beyond this legislation must be left for social propaganda.

In such a tropical country as India where girls attain to puberty comparatively earlier than elsewhere in the world some expedient is necessary to save people from the clutches of law. It is undesirable that if a man is married to a girl below 14 should be within the reach of law. If we have to adjust the contemplated amendment according to the circumstances of the present times of the country we might in conformity with Manu fix the age limit at 15 but to raise it higher would be highly objectionable. This can be undertaken by social propaganda. For the future, particularly as far as the Hindus are concerned, it is desirable that the society should hit upon a definite plan for social reform and salvation unanimously but not through legislation.

**Oral evidence of Pandit RAMESHWAR DATTA, Secretary, Sanatan Dharma Sabha, Rai Bareilly.**

(Lucknow, 22nd January 1929.)

(Vernacular.)

*Chairman* : You are the Secretary of the Sanatan Dharma Sabha, Rai Bareilly ?

A. Yes.

Q. How many members are there ?

A. 20 or 25.

Q. This opinion is the opinion of the Sabha ?

A. This is my own view. I consulted two or three leading men of the Sabha.

Q. You understood the questions ?

A. The questionnaire was explained to me.

Q. What do you think should be the minimum age of marriage ?

A. From 12 to 16.

Q. And for consummation ?

A. At least 16 years.

Q. Do you want a law to that effect ?

A. I do not want a law. There must be propaganda.

Q. Neither for marriage nor for consent ?

A. No.

Q. There is already a law fixing the Age of Consent at 13 ?

A. That may be retained.

Q. Have you reason to believe that there is consummation of marriage before a girl completes her 13th year ?

A. I have seen a girl of 14 giving birth to a child, and it is quite healthy. There was a case in my own mohalla. The girl was married at 8 or 9 and she gave birth to a child at 14 and the child is quite healthy.

Q. What was the age of the husband.

A. About 30 years.

Q. Have you seen any evil consequences also of early consummation ?

A. I have not.

Q. Not a single case ?

A. No.

Q. Do you want that consummation should not take place before 16 ?

A. It should not.

Q. But how will the people follow it unless you make a law ?

A. There is a custom that Gaona takes place either one year or 3 years or 5 years after marriage and thus consummation won't take place.

Q. If we fix the age at 14 Gaona will naturally take place at 16 or 17 according to you and the evils will be remedied.

A. I don't want a law.

*Mr. Kanhaiya Lal* : Have you got a panchayat ?

A. Yes.

Q. Would you like that the panchayats may be given the right of exemption and 14 may be fixed as the minimum age of marriage by law ?

A. I have no objection to 12 being fixed as the minimum age of marriage and permitting marriages even before that if the village panchayat grants permission for the purpose.

Q. You know according to Sushrut and Vag Bhatt a girl is not fit for maternity till 16. If you fix the age at 12 you will be giving no protection to the girls. In view of that what age will you fix for consummation ?

A. 16.

Q. If a law is made to that effect you have no objection ?

A. There should be no such law.

Q. According to Ayurvedic Shastras 16 is the proper age for consummation or maternity ?

A. But it should not be fixed higher than 13 by legislation.

**Written Statement of Khan Bahadur HAFIZ HIDAYAT HUSSAIN,  
Bar.-at-Law, M.L.C., Cawnpore, dated 6th August 1928.**

With reference to your Circular letter No. 42 A. C. C. of 25th July 1928, I proceed to answer the questionnaire *ad seriatim*. I may at once state that I am opposed to Sir Hari Singh Gaur's special marriage (Amendment) bill because it is a serious inroad on Moslem Matrimonial Law, but I have no objections to Sections 375 and 376 being otherwise amended :—

1. There is dissatisfaction with the state of the law as to the Age of Consent contained in Sections 375 and 376 of the Indian Penal Code among the educated classes who are more concerned with the future welfare of society.

2. The circumstances which in my opinion justify making an advance on the present law regarding age outside marital relations are that a girl of 14 is immature enough to realize the gravity of the position in which she lends herself however willingly.

3. Crimes of seduction and rape are not very frequent but still they are. The amendment of the law made by Act XXIX of 1925 has not had any perceptible difference.

4. It has succeeded in certain cases only to putting off the marriage beyond 13.

5. The usual age at which girls attain puberty in my part is between 13 and 14. This is general not specific.

6. Cohabitation is not common and except in cases where the girl has been subjected to the brutal passion of a man, these cases do not come to court.

7. This question does not arise in my part of the country.

8. Yes.

Coincides with the consummation of marriage.

The Gaona ceremony is performed generally and soon after as far as possible after the attainment of puberty.

9. No. Attainment of puberty is not sufficient indication of physical maturity. Much will depend upon the general build of the girl but a period of 1 to 2 years must elapse before consummation takes place.

10. This will again depend upon her build for mental development is more or less dependent upon physical development but I would put the age at 16 at which a girl may be considered to be intelligent enough to gauge the consequences of her consent to cohabitation.

11. I have come across several such cases during my experience at the Bar but I have kept no details.

12. I do consider early consummation and early maternity responsible for high maternal and infantile mortality. In Cawnpore where owing to congestion of population marriages take place early with consequently earlier consummation and maternity, the death rate of children is easily the highest in the Province.

13. Yes, there has been further development in favour of extension of the Age of Consent since the law of 1925 but this is confined more or less to educated classes.

14. Yes, but in rural parts only.

15. Yes. Difficulties have been experienced. I would suggest compulsory registration of births by enactment.

16. If the Age of Consent is increased to over 14, the margin of error in determining the age will be reduced.

17. Yes. I would separate extra-marital and marital offences into different offences. The punishment for the extra-marital offence is sufficient in the existing law but I would make the first marital offence punishable by fine only subsequent offences by imprisonment.

18. I do not think this is necessary.

19. None.

20. Penal Legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. This will also be in consonance with public opinion.

21. I prefer to rely on the strengthening of the penal law. The progress of social reform by means of education and social propaganda is a plant of doubtful and slow growth.

**Oral evidence of Khan Bahadur HAFIZ HIDAYAT HUSSAIN, M.L.C.,  
Bar.-at-Law, Cawnpore.**

*(Lucknow, 22nd January 1929.)*

*Chairman :* How many years have you been at the bar ?

*A.* 23 years.

*Q.* You say that early cohabitation is common in your part of the country. Is it very common ?

*A.* Not very common, but still they do happen.

*Q.* Is it amongst the Hindus or Muhammadans ?

*A.* Both. They do not come to court, because the relations between the husband and the wife are so very delicate that nobody wants to disturb them, and bring cases to court.

*Q.* If you raise the Age of Consent to 14, do you think that such cases are more likely to come to court ?

*A.* I should think so.

*Q.* Will not the same position as exists now apply to them also ?

*A.* Society is now more developed, and I think more cases are likely to come to light.

*Q.* Are not the reasons for the cases not coming to court inherent in the thing itself. No girl or her relations would like to bring forward a case against the husband.

*A.* I think as the awakening in the society goes on more cases are likely to be brought to court.

*Q.* Do you think the wife will complain, or her mother or father will complain against the husband ?

*A.* It is very difficult, but I only suggest that as the society gets more awakened to its responsibilities cases will come up.

*Q.* Do you not think that out of the two remedies suggested, namely, fixing the age of marriage and raising the Age of Consent, the former is more likely to prevent marriages and hence is likely to be more effective ?

A. I think so.

Q. What age would you fix in the case of girls and boys if a marriage law were to be passed?

A. 14 for girls and 18 for boys.

Q. Supposing such legislation as you suggest were made, do you think that there will be very great discontent amongst people, or do you think that the public has advanced to such an extent that there will be no such discontent?

A. The urban areas will acquiesce at once, but I am not sure if the rural areas will do so.

Q. Is the present law known amongst the people?

A. Yes; it is.

Q. Do you hold that the marriages of tender girls below 14 are disastrous?

A. Yes; they are absolutely disastrous.

Q. Is that your experience?

A. Yes; It is my experience too.

Q. Have you any idea as to what age is safe for motherhood, not from a medical point of view, but from your experience of things around you?

A. Between 16 and 17; not less than 16.

Q. You fix 14 as the consent only as a compromise?

A. Yes. It may be raised to 16 later, but 14 can be fixed for the present.

Q. From your experience, how do you think the Muhammadan population would take this law?

A. The Muslim population will not like any legislation in this matter.

Q. Do you recommend the law in spite of that view?

A. My advice to the Mussalmans would be to take this law in good humour.

Q. Do you think the dissatisfaction will be very great?

A. The dissatisfaction will not be so great as it is anticipated. I do not think that either in the Shariat or in the Quran there is any law prohibiting marriages at a certain age. Reliance has, however, been placed on certain Sunnats of the Prophet, but I do not think there is anything in the Muhammadan law by which we can say that a law like this would be an infringement of the Muhammadan law, although undoubtedly there would be opposition to the measure.

Q. Do you now modify your statement in para. 20 of your statement when you say that a marriage law would be more effective than the Age of Consent law?

A. Yes. You might take it as a modification of my views.

*Dr. Beadon* : In para. 11 of your statement you say that you have come across cases in which there has been injury to the girl. Can you give us one or two cases, without mentioning names, in which the girl was injured with the details of the injury that occurred?

A. A Muslim girl was married when she was 12, cohabitation took place between 12 and 13, and a child was born when she was only 13 years and 5 months old. There was such rapid deterioration that she died within six months of child-birth.

Q. What became of the child?

A. Of course the child died.

Q. Do you know of any other case?

A. A Hindu girl, a daughter of a client of mine, was married, and exactly the same thing as above happened in her case also. She was married at 11½, cohabitation took place at 12½ and a child was born at 13. The girl died after child-birth. I remember another case where a servant of mine married his girl who was about 12 or 13. She was kept in Purdah in Cawnpore city, and she was kept in very dingy quarters. A child was born at 13, and she died immediately after.

Q. Can you tell us what is the death rate of infants in Cawnpore?

A. It is 541 to a 1,000, the highest in India.

Q. What do you think it is due to ?

A. The death rate amongst Muhammadans is greater than amongst Hindus. The reason is that Muhammadans cling to purdah, and the cost of living in Cawnpore is also very high. The new-born child is made to live in dirty and unhealthy surroundings and there is death. They cannot treat the child properly. Although medical aid is available, it is expensive. Amongst Muhammadans I think it is more the purdah system that is accountable for this state of affairs.

Mr. Shah Nawaz : Do you think that the law of marriage will be acceptable to the Mussalmans ?

A. Amongst Mussalmans marriages generally take place above 14.

Q. Amongst the lower classes ?

A. Amongst them marriages take place earlier, because on account of poverty they want to get rid of their children.

Q. Will they accept legislation and obey the law ?

A. I cannot say they will accept, but they ought to.

Q. Would you then penalise marriages below a certain age ?

A. Yes.

Q. Would you punish the parents ?

A. Yes ; I would not go so far as imprisonment, but would punish them with fine only.

Q. Do you think fine will do in such cases ?

A. For the first offence I will fine them ; for subsequent offences I will give imprisonment.

Q. Do you think the State should be the prosecutor in these cases ?

A. Yes.

Q. Do you think that a preliminary enquiry should be made by a magistrate ?

A. But I would not leave it to the police.

Q. Through what agency would you have the enquiry ?

A. Through the revenue agency preferably.

Q. In rural areas ?

A. I would leave it to village panchayats.

Q. Do you think that the present law of registration of births is satisfactory ?

A. It is very unsatisfactory.

Q. Would you make it compulsory ?

A. Yes ; I would make it obligatory on the parents to report births. I have been agitating for this in the Legislative Council. And now there is a Committee of the Council sitting to consider the question of registration of marriages.

Q. Would you like then marriages to be registered ?

A. Yes.

Q. Do you think that the names of the children should be entered in the birth register as soon as they are given their names ?

A. Yes ; the parents should make a report.

Q. Can you suggest any other method which will be useful in proving the age of the boy or the girl ?

A. I think that a written record would be much better than witnesses themselves.

Q. Would you like marital cases to be tried by an ordinary magistrate, or local panchayats or what ?

A. I would leave it to the ordinary courts.

*Mr. Kanhaiya Lal :* Would you recommend the constitution of a matrimonial court for the trial of marital offences consisting of a magistrate and two non-officials ?

*A.* I would prefer that to an ordinary court. If you have three judges it is quite all right.

*Q.* Would you make all marital cases non-cognisable ?

*A.* I would not allow the police at all. But the present law can remain as it is as regards cases under 12.

*Q.* In order to restore good relations between the husband and the wife, would you make marital cases compoundable with the sanction of the court ?

*A.* Yes.

## Written Statements of persons not orally examined.

**Written Statement, dated the 14th August 1928, of Rai Bahadur JAI LAL SAH, Senior Vice-Chairman, Municipal Board, Naini Tal.**

I am in favour of gradual improvement in this direction as we have to carry all types of people in their various stages of civilization and conditions with us. I do not mind giving oral evidence but I do not think it will be necessary.

### *Answers to the questions.*

1. There is at present some dissatisfaction with the state of law as contained in sections 375, 376, I. P. Code. A slight change seems necessary for the benefit of health of girls or their progeny.

2. (1) The present age fixed by law is 13 years for consummation of marriage by the husband and 14 years as against an outsider.

During this period of life a girl has not full sense to understand the consequences of her doings. She begins losing her health as soon as she is with a baby. If unmarried she has to be protected against bad characters who are out to spoil the girls.

Experience shows that during this immature period girls are easily victimized and ruined for ever.

At the same time we have to see that the vast majority of the people are still ignorant and uncultured. They have to be made accustomed to the progressive change in this direction. In view of all the *pros* and *cons* of the matter I would suggest that so far as husband is concerned 14 years and for others 16 years should be the proper age fixed.

3. The average is not much in these parts. As far as I am aware there were rare instances which came within the amended provisions of law as enacted in 1925. So the benefit of the section is not appreciated as yet.

4. Amongst the literate class extension of age to 13 years may have to some extent gone towards postponing the consummation of marriage, but with others there does not appear to be much improvement. It has however stimulated public opinion to some extent.

As a rule, the cultured class is anxious to postpone marriage beyond 13 years but the orthodox type are tied to the wheel of custom which requires marriage ceremony before the girls have begun their menses. If this custom is done away with then one would be willing to extend the period even to 16 or 17 years.

5. About 13 or 14 years. This is the usual time of puberty among the Indians of all classes.

6. (1) No. (2) Yes. (3) No. It is usually after 13, only flagrant cases come before courts. The court seems to be in favour of the prosecution when the girl's age is under 14 years but when the age of the girl happen to exceed 14 years the courts presume that the girl must have been a consenting party.

7. I attribute it to blind custom which amongst the ignorant pass for religious injunction. As far as I am informed there is no religious authority which enjoins consummation of marriage before puberty, though there is an authority for such consummation "at puberty".

8. In the hills *Caona* ceremony is known as 'Durgona' which often is solemnized just after the marriage. There is no time fixed for it but it has to be done previous to consummation of marriage.



9. That depends upon the health of the girl and the nourishment she has received. Ordinarily I would take 16th year as the proper age for consummation of marriage when a girl is expected to be sufficiently physically developed to bear the strain of motherhood.

10. I think she would be competent enough at the age of 16 years as a rule.

11. There were cases where the health of the girls suffered as they became mothers about the age of 14 or 15. In case of girls of delicate constitution, they (girls) have suffered even at much later age. There were several other causes too for the ill health of the girl mother and the babies, such as want of nourishment, blindly following of customs, bad dais, neglect, etc. Usually, Parsut (low fever) affects the girl mother. The child often suffers from Habadaba (bronchitis) due to bad milk or cold. The health of such mothers suffer to a greater extent when they are confined 2nd or 3rd time before they have time to recoup themselves, since their vitality becomes weaker and weaker on each occasion.

12. Yes, to a great extent. Although poverty, ignorance and bad customs are also at the bottom in numerous cases.

13. It is confined mostly to enlightened class, who want, and have been trying, to defer the age of consent, apart from the amendment of the law in 1925. The law in question has not materially brought about much perceptible change. Intelligent and cultured people want to get out of the old rut or custom so that the question of menses may not stand in their way. As soon as marriage, after menses, becomes an ordinary affair, then nobody would consider it a disgrace to marry their girls even at the age of 17 years. According to the present deeply rooted custom, which is supposed to have some religious sanction, a girl should not be allowed to mense at her parents' house, as an unmarried girl. This idea is gradually giving way amongst some of the cultured people but such people are not many and the feeling is still strong in favour of the old custom.

14. Most of the women go by the decision of their husbands usually they favour consummation about the time of puberty, *viz.*, 13 or 14 years.

15. When cases go to court, the question of age is the determining factor on many occasions. The doctors do often try to prove a girl aged 17 as one of 14, and *vice versa*. Medical evidence is not very helpful in determining the age. Courts have no alternative but to give the benefit of doubt to the accused where the age is not clear. The courts have to find it out as other question of facts. Evidence of respectable and reliable persons, horoscopes, if proved as genuine, and general appearance of the girl, aided to some extent by medical evidence can help the court in its decision. There could not be any hard and fast rule about it. Perhaps the only solution would be compulsory registration of births in the villages and towns, etc. But it would be hugely expensive as all the records will have to be kept regularly for a number of years by a large staff.

16. I do not think so. Margin of 1 or 2 years is difficult to be solved in any case.

17. For a husband 14 years and for other 16 years should be the minimum age of consent.

In case of husband some punishment as given in schedule II, Cr. P. C., *re* Sec. 376A, Indian Penal Code. In case of others same as given in Schedule II, Cr. P. C., *re* Sec. 376, Indian Penal Code.

18. Where the complainant or the accused so desires, or if the court considers it desirable, rape cases, specially marital offences, should be tried by the courts 'in camera' although the judgments may be made available to the public. As the marital offences are difficult to be tried and results in domestic unhappiness it would be better if 2 Magistrates of the 1st class sit together as a bench and in case of difference of opinion the District Magistrate or Sessions Judge may be asked to prefer one of the two judgments.

19. At present it seems unnecessary. This can be arranged in the light of further experience.

20. In my opinion legislation fixing the minimum age of marriage will be more effective as thereby,

- (1) there will be less temptation to act against the Age of Consent.
- (2) the girls will have a better chance to develop mentally and physically.
- (3) there would be lesser number of girl widows.
- (4) there will be fewer marital offences for trial before the courts.

All educated and intelligent people would welcome the legislation fixing the minimum age for marriage. The ignorant class will also soon learn to appreciate the benefit of the same. On the whole Kumaon would be pleased if the marriage age is fixed at 14 years.

21. In my opinion both legislation and progress of social reform by means of education are necessary. Gradual improvement with the help of legislature is welcome as it keeps away the mischief makers.

### **Written Statement, dated the 13th August 1928, of Mr. GEORGE JACKSON, Bar.-at-Law, Lucknow.**

1. As regards the first question, in the Questionnaire, my reply is that there is dissatisfaction with the state of the law as to the Age of Consent, as contained in Sections 375 and 376 of the Indian Penal Code, from the point of view of the parents of the victims and of the victims themselves in rape cases.

2. (1) There are absolutely no circumstances, which, in my humble opinion justify the retention of the law of the age of consent, as it is ; but,

(2) there are several weighty circumstances for making an advance on the present law.

3. There are crimes of abduction or rape frequent in the United Provinces of Agra and Oudh, the part of the country, in which I have mostly been.

Pardon my pointing out that "Seduction" is not a criminal offence, either in India, or England, but, abduction for the purposes of illicit connection is certainly a criminal offence.

Mr. Ratan Lal at page 758 in his tenth edition of "The Law of Crimes," states, "Seduction, *per se*, is not a criminal offence, either in India or in England."

So far as my humble knowledge goes the Amendment of the law made in 1925 raising the age of consent to 14 has not succeeded in preventing or reducing cases of rape, outside the marital state, or the improper abduction of girls, for immoral purposes, and the measures, which I would venture to propose, to make the law effective, is to raise the age of consent, so far as the United Provinces of Agra and Oudh are concerned, to the age of 15 (fifteen).

I venture to think that the age of consent must necessarily vary, according to that part of India, for which a more effective measure, than at present exists, is required.

There can be no doubt that, according to climatic conditions, girls, in India, attain puberty, at different ages, and I venture to think that this very fact ought to play a large part, in determining, the age of consent, and that it is not possible, or wise, to have the age of consent as one universal rule, throughout India. Contrast a girl in Madras with a girl in the Hills and the difference will, at once, be patent.

4. As regards this question, the Amendment of 1925 has not been effective in protecting married girls, against cohabitation with husbands, either by—

- (1) postponing the consummation of marriage :
- (2) by stimulating public opinion in that direction, or
- (3) by putting off (the consummation of) marriage beyond 13.

The steps, that I would propose, to make this effective, would be to legislate that consummation of marriage of Hindu, Mohammedans and Anglo-Indian girls should not be allowed to take place until the girl has completed her fifteenth year.

I may here add that, during the three years or more that I was, the Honorary Secretary of the Ex-Services Association, in Lucknow, I learnt that several Anglo-Indian girls had got married, at, or just about, the age of fourteen.

In the case of the Hindu and the Mohammedan girls they certainly were sent by their parents or were requisitioned, by their husbands, for the consummation of their marriages, soon after the age of twelve, or at the age of 13.

Parents (Hindus and Mohammedans) had, in some cases, come to me, protesting against the consummation, and, as public opinion, on this topic, differs considerably, no appeal to it, seemed of any use, and one felt that there was no practical redress.

It must be borne, in mind, however, that the poorer the circumstances, in which girls' parents are, the more ready are the parents to get rid of the girl, and the more ready are the parents in law of the girls eager, to claim her, because, owing to their reduced circumstances, they can use her, as a bread winner, by letting her get employed, as one of the labouring classes.

The custom of too early consummation of marriages, in India, among all classes has, in my very humble opinion, lead to consumption and several young mothers (really too young mothers) and their children (really born before they should be) are but poor candidates to face the battle of life, each in their respective sphere.

It will take a great deal of time, persuasion and probably much coercive measures to break this ancient custom.

I venture to opine however that the Indians taken as a whole are ready to agree to the raising of the age of consent for the consummation of marriages, but the richer classes will break the custom, far sooner, than the labouring classes. A girl, out in the fields, all day, driving the cattle, or weeding, or carrying a basket, on her head, does not raise nearly so much protest to the consummation of her marriage, at an early date, because her physique is quite different, to other girls.

It is, among the girls of this class, that rape cases, usually, occur, for one reason or another. The girls, perhaps, do not find it quite so difficult to protest, against assault on their modesty, because, they have never had the chance of even seeing much of modesty of any kind, at all.

This, however, is not any very valid reason for not attempting to protect them, so far as the age of consent may go.

Rape cases, really, occur, amongst the girls of the poorest classes.

5. I have no very accurate knowledge as to the usual age, at which girls attain puberty, in the United Provinces, but, I venture to think that this age must differ in different communities, or classes of society. Food or the want of it, nourishment and the want of it, surely, play their part in this matter.

6. So far as I have been able to learn sexual connection does take place, in all the three circumstances, mentioned in this question. Indians have stated in my office (be it to their shame) that sexual connection, before puberty, was, according to their ideas, the only time, for sexual connection, and, as regards Clauses 2 and 3 the cases, that come to Court, are, usually, cases of the girls of the poorer class having been violated.

7. As regards this question the practice of early consummation of marriage, before, or at puberty, will, probably, have sprung up from the fact that, unless a girl can consummate her marriage, soon after puberty, she probably will choose Nature's husband, because, her passions are, beyond her control, and, she is prone to follow the dictates of her nature, far more quickly, than the dictates of any preceptor or preceptress. I have no knowledge with which to answer the second question in paragraph 7.

8. "Gaona" is, usually, performed, in the United Provinces, and so far as I have got to know, in the generality of cases, it means the commencement of co-

habitation. It is, generally, performed at about the time, when the parents think it advisable to send the girl to the house of her father-in-law, or when the father-in-law thinks that he ought to demand his daughter-in-law.

9. This question is of a very complex nature. In some cases the attainment of puberty might well be a sufficient indication of physical maturity to justify consummation of marriage.

In the year 1915 two Anglo-Indian girls just a little over 14, each about 5 ft. 8 ins. in height, and fully developed, in every direction, did get married to soldiers, from England, and, among the labouring classes, I have seen quite well developed girls, often, working, every day, and they looked of sufficient physical maturity to consummate a marriage.

I venture to think that the first part of the question can only, safely, be answered, by replying that it depends, entirely, on the physique and appearance of the girl, as regards the second part of the question as to "at what age and how long after puberty may a girl's physical development be considered to be enough," etc. As to this, again, it is impossible, for my humble ignorant self to answer, but, with all my ignorance, I would venture to say that it depends, entirely, on the girl. It must be known to every body that several girls, when twenty years of age, have such a poor physique that they ought not to be allowed to marry, at all.

As regards question 9, then, I venture to think that, on the large and by, the age of 15 should be kept, as the universal age, for the United Provinces, and that the test put in question 9 is, in my very humble opinion, not a real and useful test, because it involves a person's set of circumstances.

10. As regards this question I venture to submit that it entirely depends on the upbringing of the girl. A girl from a village, who has never heard very much about the word modesty, and, indeed, seen very little of it, inasmuch as, she sees boys and girls, men and women, bathing, every day, much as Adam and Eve must have bathed, and, who goes out to the fields, morning and evening, to obey the various calls of nature, and lives with her parents, in not a very large dwelling, I would venture to think that she could give an intelligent consent of cohabitation, with a realisation of consequences, at any age, after, ten or eleven, for by that time there is very little left for her to learn, as to consequences.

As regards girls, however, brought up in a more secluded way, the case must be different; they, probably, would be somewhat hesitating, to display any intelligence, on this question, but, ought certainly to be able to give an intelligent consent, by the age of fifteen (15). In the case of a girl, who had already had two sisters married, she would get to know what is the effect of marriage.

11. As regards this question, I fear I must confess that any knowledge that I have is too limited to be of any value for answering this question.

12. Yes certainly I do consider that early maternity, which is but the result of early consummation, legal or otherwise, is certainly responsible for the mortality of mother and child in a very large number of cases, though not always, for it depends on the girl's physique and development and, also, on the physique and development of her young husband. Maternity, at a too early age, I have been, correctly informed, leads to phthisis and rickets and sub-normal children.

The first child of a too young mother generally succumbs either at birth, or soon thereafter.

In my humble opinion there is infantile mortality, which is very largely due to confinement by ignorant women and to their rather barbarous methods, and to a lack of suitable nourishment, for the mother, and her child, and, also, to some extraordinary beverages, which the mothers are made to take. I must admit that, as regards all this, I am answering from what I have heard and have been told. I also know this that the wives of the men servants living in my compound, simply will not go to any hospital for confinement; and I believe they are discouraged by the amateur midwives who gain a livelihood by confining the women of the

poor classes, and, who would naturally discourage confinement in hospitals by spreading mischievous tales, so as to preserve their means of livelihood.

13. Yes, there has been further development of public opinion and so far as I know is confined to the higher classes.

14. Women in the United Provinces, who are in poor circumstances whether Hindu, Mohammedan or Anglo-Indian, certainly do favour early consummation so as to relieve the daily pressure of want of food in their homes.

15. Yes, certainly, there always have been difficulties in determining the age of girls in rape cases, and the best way to bring about a sure record would be to insist peremptorily on the birth of every girl-child being registered. There is, however, no baptismal register and a girl "Munia" could easily be confused with her sister "Punia", if the prosecution or the defence so desired. The birth register would only contain the entry "a girl born, in the house of so and so, to-day, the 1st of January 1928", but, another entry of the same kind on the 1st of January 1929 might well go to prove the birth of two girls respectively, but no register is kept of the christening of these two girls, and, in a rape case, the prosecution or the defence would refer to one and the same register for the date of birth in order to ascertain the age of the girl on the date of the commission of the offence and, I think some much more drastic methods should be used for determining the age of a girl. If the age of consent is to be raised to fifteen the chance of proving her correct age becomes more difficult.

Lt.-Col. L. A. Waddell, C.B., C.I.E., LL.D., M.B., F.L.S., in his work "The Sixth Edition of Lyons Medical Jurisprudence", states at page 42—

"In the mode of estimating age", the chief data for estimating the age of an individual are the teeth, height and weight, hair, and breast development, etc., and he does not lay down that there is any distinct and well-defined and incontrovertible method for fixing the age of a girl.

I would, therefore, very vehemently insist on the Government instituting the introduction and upkeep of a Register as regards the birth of a girl and the various stages of her life till after the age of 15 (fifteen) that is to say, let it be entered "born a girl in the house of Ram Bux, this day of so and so, and let a half page be kept for entries to be made every nine months to the effect", today, so and so visited the house of Ram Bux, and his wife, girl born on such a date still alive and enter any particulars he may be given about the girl. If such a Register is honestly and regularly kept and if Ram Bux is told that he must go and make an entry about his daughter periodically and if the chowkidar or mukaddam or mukhia of the village are told that this register must be accurately and honestly kept up; if not the delinquent, whoever he may be, if he supplies wrong information, will be guilty of an offence, under Section 177 of the Penal Code. The difficulty in India is that the very persons for whom strenuous efforts are made to protect their interest are the very persons who bitterly resent any innovation, and, who adopt a non-co-operative attitude on that very matter on which they ought to render every help. When these people suffer for their want of carrying out their duty they invariably blame everybody except themselves and then grumble, because their children suffer.

16. If the age of consent is raised to fifteen years, I venture to think that it will be easier to prove the margin, between fourteen and fifteen, than between twelve and thirteen or thirteen and fourteen.

17. Yes, certainly extra-marital and marital offences should be differently classified because, they do not start being in the same category. The delinquent husband might get six months' rigorous imprisonment, but, the other offender ought to be so severely punished, so that his sentence might act as a deterrent.

18. Yes, I would make a difference if the delinquent husband admitted the commission of the offence, he could be tried summarily; as regards the other, the present procedure is quite enough.

19. I venture to think that the present safeguards are sufficient.

20. For the present penal legislation fixing a higher age of consent for marital cases is more likely to be effective than legislation fixing the minimum age of marriage. People more quickly learn by suffering punishment than by prohibition.

21. The progress of social reform by means of education and social propaganda is likely to be very slow and education is not likely to be very effective, but the strengthening of the Penal law will leave no room for any doubt in any one's mind, and the uninformed will very soon learn, when they get to know of the punishments of others.

**Written Statement, dated the 9th August 1928, of Mr. CHAIN SINGH,  
L.A.A., Newal Kishore Estates Office, Lucknow.**

1. Yes, there is dissatisfaction with the state of law as to the age of consent as at present contained in the Indian Penal Code. It is many sided, *e.g.*—

- (1) There are people who are dissatisfied with the present law because in their opinion the age of consent is fixed at a low figure. They want to raise it. For example, Dr. Hari Singh Gour and those who follow him.
- (2) There are others who think that the age of consent is fixed at a high figure.
- (3) Then there are those who think that fixing the age of consent is against religious injunctions.
- (4) Still there are those who think that no amount of legislation will help in solving the problem which is a social one and can be solved, if at all it can be, by education, propaganda, etc.
- (5) There are those who think that it is cruel to legislate in such matters and want that human nature ought to have its full course. To be more plain, according to their opinion, there are cases where wives although below the present age of consent according to law, *i.e.*, 13 years, desire sexual intercourse with their husbands.
- (6) There are those to whom the prospects of being sent for transportation for life for having sexual connection with their own wives, is very repulsive.
- (7) Lastly there are those who think that it is not the low age of consent that does any harm but it is the poverty of the people that is at the root of all social degeneration and hence they advocate that economic readjustment of the society will solve the problem.

2. (1) The law of the age of consent as it is, should be retained because about the age of 13 years, girls generally attain puberty after which it is in no way harmful to have sexual intercourse with these.

(2) For reasons stated above, I do not think it necessary to make any advance on the present law.

3. I am not a lawyer, who has to go through the law reports and as such who can say with some authority, in what part of the country crimes of rape and seduction are more frequent than in any other part. However, in my opinion, they may be equally frequent.

The amendment of the law made in 1925 raising the age of consent to 14 years has not succeeded in preventing or reducing cases of rape outside the marital state, because those committing rape would not be in a mood to consider at that time, what the law has to say with regard to the age of consent.

The same remarks apply to the improper seduction of girls for immoral purposes.

To make the law effective, I would suggest, education, propaganda and especially the economic readjustment of the society.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years may have had some effect, an infinitesimal one in my opinion, in protecting girls against cohabitation with husbands within the prescribed age-limit

- (1) by postponing the consummation of marriage,
- (2) but has stimulated the public opinion in the wrong direction and
- (3) may be the cause of putting off a few marriages beyond 13.

To make the law effective, I have already given my opinion in my answer to question 3, viz., education, propaganda and economic readjustment of the society.

5. Here I must make it clear to what part of India I belong. I was born at Dhulia in the West Khandesh District of the Bombay Presidency and was a resident of that place upto the age of 18 years. The next 12 years I spent in the Bombay City and for about the last 2 years I am in the United Provinces.

Now to answer your question, I may say that girls generally attain puberty at the age of 12 or 13 years.

Yes, the age of puberty differs in different castes, communities and classes of society, the reasons being :—

- (a) different modes of living,
- (b) different surroundings,
- (c) different food, and
- (d) different ways of thinking.

6. (1) Cohabitation is not common before puberty.

(2) But is common soon after puberty.

(3) It matters little—so long as the girl has attained puberty—whether she has completed 13 years of age or not.

Yes, I have read in the Papers of some cases coming to court, but I think, it is nearly the fraction of the offenders—according to law—being brought to book; and it is my firm conviction that no law—and no volume of it—can be effective in such matters.

7. In case of death of the husband, or his being afflicted by an incurable disease, etc., the Dharma Shastra gives permission to the *re-marriage* of a girl who has not attained puberty.

(Please see Padma Puran, Chapter 85, Shlokas 59, 60 and 61 especially the last one.)

So, if there is permission for the *re-marriage* of a girl who has not attained puberty then what doubt there is about the MARRIAGE of such a girl? Hence the Shastras enjoin the practice of early marriage.

But it may also be due to the present state of Society and its present condition of living.

8. The “Garbhadan” ceremony is performed in some castes only, in the Maharashtra. It DOES coincide with the consummation of marriage. I remember a person (Maharashtrian) jockingly calling the ceremony “bed ceremony”.

The “garbhadan” ceremony is generally performed after the attainment of puberty or very soon after it, as the financial and other conditions of the parties concerned permit it.

“Garbhadan” itself literally suggests the act of consummation of marriage.

9. I DO consider that the attainment of puberty is a sufficient indication of physical maturity to justify the consummation of marriage. Take for instance the case of plants and animals who are supposed to live a more natural life than the human beings.

The plants flower (mature) and soon after bear fruit. In the case of animal too, the females, soon after the first rutting, cohabit with the males of their species and bear progeny.

No scientist has ever suggested that the plants or more particularly the animals would have fared better had they been prevented for some time at least, from bearing fruit or progeny.

10. At about 12 or 13 years of age, a girl in India, would be competent to give an intelligent consent to cohabitation but as regards the realization of consequences it is quite a different matter.

In India and also abroad, where men and women work together, we come across cases where grown-up girls and even elderly women have given consent to cohabitation only to mourn the consequences afterwards.

So it all depends upon individuals and their circumstances ; their age has nothing to do with their consent to cohabitation.

11. I think that cohabitation before puberty is injurious to the girl but if done after puberty it is not injurious ; as the girl attains her full physical development by the time she attains puberty.

I cannot quite follow those who say that girls go on developing physically even after puberty. If one calls the increase of the girl in length, breadth, width or weight as physical development, then he is hopelessly wrong. It is corpulence and not physical development.

This sort of increase—corpulence—may continue for a long period in life, nay upto the very year of death. How can then this be called physical development ?

After all there is no gauge, or measure or no set of standard by which we can compare whether a girl or a woman of any age, has attained full physical development or not and hence it would be safe to assume that when a girl attains puberty, she attains her full physical development also, by that time.

I am sorry I am not in a position to give any concrete example of any girl having suffered injury to her health or body as a result of cohabitation before puberty.

12. There can be no children born of a girl who has not attained puberty and as to the sickly children, the AGE of the mother has nothing to do. Had it not been so, then a child born of a mother, aged say, 20 years, ought to be invariably healthy, but alas, the facts are quite different.

If two children, who are born of two sets of equally healthy parents, are reared under identical conditions, then both the children would be equally healthy, even if one is born of a mother aged 12 and the other of a mother aged 20 years.

It is not the early consummation and early maternity that has anything to do with the high maternal and infantile mortality. The main causes are, insanitary conditions, ignorance and the poverty of the people. If these are removed, their intellectual as well as physical progress would be rapid.

13. There has not been any further development of public opinion in favour of an extension of the age of consent in marital or extra marital cases since the amendment of the law in 1925.

Of course, there is a certain class of people who want to raise the age of consent in India, because, when they see the higher standard of physical and intellectual development of the people of the West, they think that it is due to late maternity there.

Hence they want to erect artificial barriers in the way of early maternity here. But they have failed to compare and consider the climatic conditions and the mode of living of the people of the East and the West.

21. I have absolutely no faith in the strengthening of the penal law to secure the object in view but a great deal will depend on the progress of social reform by means of education, propaganda and above all, economic readjustment of the society.

Some persons assert that social questions can be effectively solved by legal enactments and as an instance quote the legislation regarding the abolition of "Sati". They forget that there is as much difference between the practice of



early consummation of marriage and the custom of Sati as there is between the night and the day.

To secure conviction of the offenders of the law, two things are absolutely necessary,—information and evidence. In the case of early consummation of marriage, it is next to impossible to have these two essential things while in the case of Sati, it is not so. The reasons are obvious.

Under these circumstances, may I respectfully ask, how will the tightening of the screw of law, help the society in loosening the grips of early consummation of marriage ?

**Written Statement, dated the 21st August 1928, of the Hon'ble Mr. Justice E. M. NANAVUTTY, I.C.S., Judge, Chief Court of Oudh at Lucknow.**

1. This is rather an academic question. Amongst the masses of villagers, so far as I know, no thought is given to the age of consent as contained in sections 375 and 376, Indian Penal Code, and consequently no dissatisfaction is felt. A few highly-educated Hindus in towns, stirred by the new teachings of eugenics, do certainly express dissatisfaction with the low age of the girl at which sexual intercourse with her is deemed lawful under the Indian Penal Code. In this matter, so far as I can judge, the "illuminati" have no following amongst the masses, and there is a wide gulf between the two.

2. This is a very big question involving many considerations. It is a very dangerous thing to legislate on matters so intimate and delicate as sexual commerce between husband and wife; the care of the wife is the prime duty of the husband and it is not by a penal enactment that principles of health and eugenics can be instilled into the minds of a young couple. Sati may be prohibited by an Act of the Legislature but sexual commerce between husband and wife (which is a matter upon which third persons can form no opinion and have no control) cannot very well be regulated by the Indian Penal Code.

If the age of consent is to be raised by making it penal for a man to have intercourse with a girl under sixteen, then this object I think would be better achieved by making marriages with girls under sixteen illegal. Hindu and Mohammadan society, as at present constituted, is not, so far as I know, prepared to support such legislature but still an attempt might be made by the reformers in this direction. In India a girl ripens very quickly and a girl of twelve or thirteen has got the physical development of a European girl of sixteen. This early physical maturity also hastens the advent of physical passions and the desire for maternity is strong even in a girl of twelve. These and other cognate considerations lead me to the conclusion that in the present state of Indian society (at least in the United Provinces) it is expedient to retain the law on the subject as it is at present.

3. This question is not easy to answer and does not admit of a definite "yes" or "no". It all depends upon what meaning one chooses to give to the word "frequent" used in the question. Owing to the great demand for young marriageable girls from the Punjab, there have been many cases of abduction and seduction of young girls from the United Provinces. Rape too is fairly common but considerations of family honour and the good name and future of the outraged girl prevent many cases from being brought into the law courts.

So far as I know the raising of the age in 1925 has had no effect in reducing cases of rape. It is difficult even for a medical expert to say with any degree of assurance based on scientific data whether a girl is over or under fourteen years of age. If both in villages and in towns births of children were compulsorily registered, and such registers of births were properly kept in the Office of the Collector of the District, it would make it comparatively easy for criminal courts to ascertain the ages of boys and girls. At present the actual administration of the law on this point depends upon the mere opinion or whim of the Civil Surgeon

who in most cases goes by the general physical development of the girl, and his opinion is for the most part mere guess-work. If the law is to be made effective, a proper system of registering all births should be put into force all over the country both in towns and in villages and a proper and permanent record of all births should be kept.

I consider that the seduction of girls for immoral purposes has been to some extent checked by the raising of the age. The sections of the Indian Penal Code relating to kidnapping, however, are quite distinct from those relating to rape; and in the present enquiry we are only concerned with sections 375 and 376 of the Indian Penal Code. The spread of general education and a proper study of eugenics are the most effective remedy for combating the evils of early marriage and of ignorance as to the laws of health, especially in relation to sexual matters.

4. No data in respect of any large class or circle of persons are, or in the nature of things can be, available on such a matter. So far as my limited information goes (and if I may be permitted to dogmatise on purely *a priori* reasoning), the raising of the age of consent has had no appreciable effect. The ages of girls are elastic; girls are of just that age that they or their parents particularly their mothers, wish them to be. In many cases, in the villages particularly, no exact record is kept of a child's age. The first time that a girl menstruates is what generally determines the time when she is or ought to be, according to Indian ideas, sent to her husband's home. In many cases the advent of the menses is concealed by the mother because the girl is really a child of nine or ten years, and for a year or two perhaps the mother is successful in concealing the puberty of her child.

In this matter the position taken up by the Legislature is, if I may say so with all due respect, hopelessly illogical and untenable. A lawful marriage renders cohabitation by a husband with his wife perfectly lawful in the eye of the law and yet if the wife is under fourteen and over thirteen, cohabitation with her by her husband is a *pénal* offence under section 376(a), I. P. C. In other words while the marriage is legal the attainment of the object of that marriage is made a criminal offence for the husband. The good sense of the people and of the Police revolts against this impossible position taken up by the Legislature and as a result things go on much the same as before in spite of the fact that section 376(a) has been incorporated into the Indian Penal Code. In my opinion this new section 376(a) will remain but a dead letter unless some enemy of the husband and of his family will, with the aid of the Police, drag the husband into a law court and disgrace his family. In a case of this nature the wife is thrust unwillingly into the position of a complainant against her own husband who is the accused. This is not only opposed to Hindu ideals of wifely duty to her husband but breaks up the peace of the home and drags the most intimate relationship of husband and wife and all matters which by universal consent are held most sacred and not to be mentioned or discussed in public into the limelight of a criminal trial, with consequences far more disastrous than those which we deplore in our modern law suits relating to divorce in Europe and America. In my opinion section 376(a), I. P. C., is a blunder. In no other country has such an offence been created and the sooner this new section is abrogated the better for all concerned. Any attempt on the part of the Age of Consent Committee to proceed on the principle embodied in this section is much to be deprecated and is in my opinion doomed to failure.

5. This is a matter upon which perhaps a medical man or a lady doctor with a large practice is in a better position to give a correct answer than myself. As far however as my information goes in the United Provinces girls attain puberty ordinarily between the ages of nine to eleven. The girls of the Bania class and girls living in cities and of well-to-do families (owing to rich living and early precociousness and an unhealthy moral atmosphere) attain puberty much earlier than girls in villages who lead a hard open-air life and have coarse simple food. Physical exercise and a simple healthy life in an atmosphere free from unhealthy sexual influences tend to retard the attainment of puberty in girls, while conditions just the reverse hasten the attainment of puberty in girls. In special cases physiological and psychological factors serve to explain the departure from the norm.

6. It is almost impossible to have positive ascertained data on any considerable scale to answer this question. The answer must largely be based upon surmise and upon improper information gleaned from many sources. So far as my information goes I believe that cohabitation is not common in the United Provinces amongst any classes of people before puberty but such cohabitation is, I think, common soon after puberty and even before the girl completes her thirteenth year. In the very nature of things such cases do not come to court because neither the offending boy nor the consenting girl nor their parents find anything to complain of in such conduct. The common idea is that soon after puberty the girl must go to her husband, and the husband, on pain of being stigmatised as impotent and as eunuch, must have sexual intercourse with his wife. Even the girl herself (with her present ideas and her present state of knowledge) would despise her husband if he did not exercise his marital rights on her as soon as she was sent to him.

7. I have been told by my Hindu friends that the early consummation of marriage at or shortly after puberty is enjoined by their religion. I have not asked them for the religious text because the practice of early marriages has hardened into a well-known custom which none can gainsay and the consummation of such marriages logically and necessarily follows the celebration of the marriage. Controversy on this point, if I may say so with all due respects to the "pandits" on both sides, is to my mind quite barren and irrelevant to our main purpose. It is not the early consummation of marriages which Hindu reformers ought to prevent; it is the begetting of children on immature mothers which is the goal of their desires and these two things are to my mind quite distinct unless, with the Roman Catholic, the Hindu also believes that contraceptive methods are a sin and a crime. And in that case the only possible solution is self-continentence and self-control on the part of the man which in the case of 90 per cent. of men is an impossibility and a consummation that cannot be attained.

8. The Gaona ceremony is usually performed in the United Provinces. It is generally anterior to the consummation of marriage. It is as a rule performed after the attainment of puberty by the girl within a month or so after her first menses. As I have pointed out above if the girl is too young or the mother is anxious to keep her with her in her own house, she conceals the advent of the menses for some months until her secret leaks out and the mother-in-law of the girl swoops down upon her and drags the unwilling feet of the girl to the home of her husband amidst much weeping and wailing. In most cases this weeping is pure sham and the outward homage paid to an old-world custom, and in some cases the young girl has been already initiated into the mysteries of married love.

9. The first part of this question, *as posed*, must be answered in the affirmative. The attainment of puberty by a girl is undoubtedly a sign of physical maturity so as to justify sexual intercourse with her as a purely physical animal. But what the framers of the question really had at the back of their minds (if I may make bold to say so without offence) was whether the attainment of puberty by a wife justified the begetting of children upon her by her husband. If that had been the frame of the question, my answer would have undoubtedly been a most emphatic "NO". In my opinion a woman reaches the full maturity of her mind and body between the ages of eighteen and twenty and the burden of motherhood ought not to be thrown upon her shoulders until she reaches that age. An Indian girl undoubtedly matures very rapidly both in mind and body, but as the cultivation of her mind has been much neglected it often happens that she has the body of a woman and the mind of a child; the passions and appetites of a full grown woman cannot be controlled by the mind of a child and so it comes about that the Indian woman or girl falls a ready victim to the lusts of men. It is therefore necessary to educate girls and to educate their boy-husbands as to their heavy responsibilities towards their girl-wives. It is not by punishing boys for offences under section 376A, Indian Penal Code, that their sense of responsibility towards their little girl-wives will be fostered. The customs and habits of the people will not permit of late marriages of girls; and it is only by constant and persistent propa-

ganda that the masses can be educated in these matters. If however it is possible for the Government of India to lay down that a boy and girl who are lawfully married may not indulge in sexual intercourse on pain of rigorous imprisonment for two years for the boy, it is equally possible for that Legislature to enact that no marriages of boys and girls under eighteen years of age shall be celebrated. Sexual immorality in that case will no doubt increase but the health of mothers and their children will be to some extent safeguarded.

10. "Intelligent consent" may not be a wise one and is not tantamount to it. The instinct of motherhood is so strong in an Indian girl and her physical development so rapid that even a girl of twelve would be in some cases fully competent to give an intelligent consent to cohabitation with a due realization of consequences. Like the moth round the flame of the candle, the Indian girl in her love for her husband is so foolish that she is prepared to sacrifice her life and everything for the gratification of her lord and husband. It is for the latter to see that his girl-wife does not uselessly and needlessly sacrifice her life. The European husband, if he happens to have a wife with a delicate constitution, will not allow her to beget a child for him. If an Indian husband cherished the health and life of his wife in the same way, there would be no question about the age of consent. It is the consent of the husband (who may be of any age from fifteen to sixty) that matters. The wife but surrenders her will to her husband's, and it is up to the latter (to use an Americanism) to save his wife in spite of herself.

Most girls learn the A. B. C. of sexual knowledge from their mothers at the time of their first menses. They realize in a vague shadowy sort of way the consequences of cohabitation but it is after their marriage and generally from their husbands that they learn some of the mysteries of married life, and it is only after the birth of their first-born that they have a full realization of the consequences of sexual commerce. A heavy responsibility therefore lies upon the man not to burden the woman with the duties of motherhood unless and until she is fully prepared for them. A wife with a delicate constitution but fully grown-up and mature in age may give an intelligent but unwise consent to cohabitation with a full knowledge of consequences. It is, however, always for the husband to shoulder the responsibility and to refuse to take advantage of such generous consent given by a self-sacrificing wife. There is of course the possibility of indulging in sexual intercourse without incurring the risk of begetting children by using contraceptive methods, but that is quite another consideration.

11. My answer to this question is in the negative as I have not personally come across cases in which cohabitation before puberty led to injury to the health of the girl or prejudicially affected her progeny.

12. I certainly do consider early consummation of marriage and early maternity as two of the principal factors responsible for high maternal and infantile mortality. I also consider want of hygiene and lack of sanitation in most Indian homes and the ignorance of Indian *dais* or midwives and the weak constitution of the Indian girl-wife as contributory causes of high maternal and infantile mortality. The *pardah* system resulting in the ignorance of the girl-wife in matters of health and hygiene, and the custom of the "*nai*" or barber woman cutting the umbilical cord of the child with a dirty unclean *khurpi* (generally used for cutting grass) or an old razor are other causes that make for the early death of the mother and child with the silence and depth of a strong tide at night.

13. So far as I am aware there has been no general public opinion in the United Provinces in favour of an extension of the age of consent in marital and extra-marital cases since 1925. In fact, public opinion is, as far as I can judge, utterly apathetic on his point. A few educated Indians here and there alive to the importance and the need of eugenics and hygiene and sanitation in these matters are crying for legislation to stop infantile and maternal mortality.

14. Undoubtedly they do, and that being the case there can really be no public opinion in favour of an extension of the age of consent. Until the woman of the

country take up this cause in right earnest the generality of men who look upon them as their playthings will not really and seriously bestir themselves.

15. Sections 375 and 376, Indian Penal Code, deal only with the single offence of rape. Difficulties in determining the age of the outraged girl have been felt by the trying judge or magistrate; but these have been overcome by arbitrarily accepting as gospel truth the *ex-cathedra* opinion of the Civil Surgeon of the District where the girl resides. Medical science has confessed its inability to determine exactly whether a girl is 13 or 14 or 15, and this being the state of our scientific knowledge on this matter the only solution of the difficulty is, it seems to me, to make a law making the registration of the birth of every boy and girl compulsory throughout the length and breadth of India.

16. My answer is in the negative, because so far as I know there are no certain and well-defined and infallible criteria for determining whether a girl is 12 or 13 or 14 years of age. The usual tests employed by doctors only enable them to make an approximate guess at the girl's age, and they rely more upon the general development and external appearance than upon any scientific data for their opinions.

17. I certainly would separate the two classes of offences. There is a radical distinction between them. In the case of extra-marital offences of rape I would fix the maximum punishment at transportation for life and 10 years' rigorous imprisonment as at present. As regards "offences" committed by the husband upon his young wife on account of his exercising his marital rights on her, I would not recognise them as offences at all. The position taken up by the State in this matter is to my mind most illogical and leads to very anomalous results. The education of the young Indian in matters of hygiene and sexual science is most necessary, but it is not by branding him as a criminal and by sending him to jail that such knowledge can, with advantage, be imparted to him. If he is punished for his ignorance like an ordinary criminal, he is bound to get embittered against society and the Government of India, and will always look upon himself thereafter as a much-wronged person. The future of the young couple and the happiness of the young girl-wife are marred at the outset. Bitter enmities are created between the husband's people and those of the wife. The interference of the State in the most intimate relationship and sacred intimacies of married life is fraught with most dangerous consequences. Any enemy of the husband or his family can wreck the happiness of the young people, and the power which the police can exercise in these delicate matters will more often than not be abused by them to the financial ruin of the young husband and his parents. The publicity given in a law court to the secret private lives of two young people will also be most unwholesome; and altogether from every point of view, so far as I can see, section 376(a), Indian Penal Code, is a very dangerous and undesirable addition to the Indian Penal Code. It will be difficult for a medical officer to say positively on oath that the injured girl in any case is under fourteen years and over thirteen, so that in most cases the ill-advised prosecution will fail, but not before it has left behind it the aftermath of bitterness and mistrust between husband and wife and their respective families. Fortunately the good sense of the public has up to now spared us the scandal of a prosecution under section 376(a), but when the provisions of this new section become better known to the public and to the police I shudder to think what grave harm to the domestic happiness of young people this new section may not be responsible for.

18. I have already said above that I would not convert an act due to ignorance on the part of the young husband, affecting the health and welfare of his young wife into an offence under the Indian Penal Code. The young husband and wife and even the older members of their families need instruction in sexual science, and sending the young husband to jail is not the best way of imparting such knowledge to him and those round about him. If, however, section 376(a), I. P. C., is to continue to remain on the Statute Book I would certainly direct that the trial of such offences should be held *in camera* and no accounts of such trials should appear in any newspaper or even in any official publication.

19. I am not aware of any *effective* safeguards at present in existence embodied in the Indian Penal Code. There can be, in the very nature of things, no real and effective safeguards against collusion or extortion or improper prosecution in such cases ; and the very difficulties in the way of any one trying to evolve such safeguards in the factory of his brain ought to convince him of the unwisdom (to say the least) of having such a section as section 376(a) in the Indian Penal Code. To most normally constituted men of ordinary thinking the position taken up by the Crown will be looked upon as quite indefensible and every effort will be made by them to save the young husband from the consequences of his ill-advised act which in the present state of their knowledge will not be looked upon by those round about him as a crime or an offence and one which ought to be visited with imprisonment in jail. In most cases even the injured girl-wife would resent anyone taking her husband to task and sending him to jail. It will, therefore, be third persons with ulterior and sinister objects of their own, who will bring such cases to light and the truth will be overlain with tons of falsehood created by conflicts of interests and passions which such a case will inevitably raise with results disastrous to morality and the peace of the home. (Sic transit gloria domi Indici).

20. and 21. I will answer both these questions together. Penal legislation fixing a higher age of consent for marital cases will not achieve the object we have in view. Where the young wife is of a passionate nature she will not wait for the higher age before she gives consent to her husband cohabiting with her. In these matters of personal volition and of purely personal pleasures and appetites which make up the sacred intimacies of married life, it is not for the law to interfere and make penal the natural desires of young people who have obtained before-hand the sanction and the imprimatur of law and religion for the indulgence of their sexual appetites. As well might the Legislature make it a penal offence for a man or a woman to smoke tobacco or to drink liquor before he or she has reached the age of majority. Such molly-coddling enactments defeat the very purpose for which they were sought to be enacted. Penal legislation therefore to my mind in this matter is quite futile.

The fixing of a minimum age of marriage would no doubt to some extent serve the purpose we have in view ; but it is well known that the ages of girls and women are known only to themselves and to their God and the mere man dare not venture on that delicate ground. Medical science is powerless to help us in fixing the exact age of a girl. There are no authentic and properly kept registers of the births of girls preserved in every village in India ; and so it will come about that the parents of the girl will boldly and glibly swear that their girl at the time of marriage had attained the minimum age prescribed by law, whether she had in fact attained that age or not ; and it will be difficult for the prosecution in face of the affidavits or sworn testimony of the parents of the girl and in face of the horoscope of the girl produced in support of her age to prove affirmatively that the affidavits and horoscope were all false. Apart from these inherent difficulties I doubt if public opinion in villages and even in towns in the United Provinces would favour any such proposal fixing the minimum age at which marriages could be contracted. The minimum age of marriage varies with different classes and depends upon many factors some of them beyond even the control of the parents or of the girl herself. It is, therefore, impracticable for the Government to fix any minimum age of marriage although if one is compelled to make a choice between the two alternatives set forth in question No. 20 he would I fancy prefer the latter. In my opinion both alternatives are unpractical and useless for the purposes we have in view.

The fact of the matter is that penal laws must not be in advance of public opinion on any given subject. In these sex matters the gulf between the views of the educated classes and those of the masses in India is so great that any measure which meets with the approval of enlightened Indians will be strongly opposed by the masses and until the masses are educated to appreciate the horrors of the situation they are bound to render null and void the best efforts of high-minded Indians to improve by legislation the lot of the girl-mother and the girl-wife and to check the deplorable waste of human life. These matters are of common knowledge

so that he who runs may read, and yet the reformer in his zeal for the cause which he has so much at heart is prepared to shut his eyes to the strong opposition against him. He may succeed in the Legislative Assembly and the Council of State, but when the measure is once enacted and comes into force then will come the rub, and in this unequal contest the inertia and the weight of the masses will carry all before them, and the well-meant enactment placed on the Statute Book will result in more harm than good. It has been well said that you cannot make men moral by Acts of Parliament. Similarly the Indian Legislature cannot make Indian husbands more careful and considerate about the health of their wives by legislative enactments. The dictates of good sense and prudence and of enlightened self-interest and a sound knowledge of sexual matters with a view to minimising the maternal and infantile mortality cannot be taught by any enactment of the legislature, penal or otherwise. I can in this connection only apply the words of Shakespeare and say that in these matters,

“there is a mystery, with which relation durst ne’er meddle in the soul of man, which hath an operation more divine than breath or pen can give expressure to”.

The problem of maternity and of child welfare is a very big one and it does not admit of any speedy solution by the passing of any penal enactment. To my mind this remedy is not only useless but also very dangerous and it is better that in these matters a policy of “*festina lente*” were adopted by the reformers who must visualise the tremendous consequences of tampering with the secret lives of young married couples. I am of opinion therefore that the object the Age of Consent Committee has in view would be best secured by the advance of social reform by means of general education and social propaganda. The problem in a nutshell is not to prevent the consummation of a lawfully solemnized marriage but to prevent the begetting of children on immature girl-wives; and apart from the question of educating the young husband to learn self-control and to respect the person of his girl-wife and to have a thought for her health and future welfare, the only solution to my mind lies in a general diffusion of knowledge as regards contraceptive methods. The education of girls and the development of their bodies by physical culture and by their participation in sports and games of all kinds is also to be encouraged. The *pardah* system must also be made gradually to disappear if the general health of Indian girls is to improve. It is by the development of their minds and their bodies that Indian girls may be made capable of looking after their own health and of taking their proper place in society. This will take time but the progress will be thorough and lasting.

If, however, immediate results are sought to be secured by the reformers then I can only suggest that by an arbitrary enactment the Government of India should prohibit all marriages of boys and girls under sixteen years of age. This measure will at the outset meet with strong opposition but once the Act is passed the people will quietly submit to it and many parents will be deeply grateful to Government in their heart of hearts for saving the health and lives of their young children, and the young people themselves will soon learn to realise the benefits of the Act.

### **Written Statement, dated the 16th August 1928, of the Vice-Chairman, Municipal Board, Sultanpur.**

1. There is somewhat dissatisfaction with the state of law as to the Age of Consent as contained in sections 375 and 376 of the I. P. C.

2. (2) At the age of 14 all the organs of the women are not fully developed. They do not attain maturity at the age of 14. Their mental, physical and intellectual development is not complete at the age of 14. Their imagination is not developed

at the above age. They cannot foresee the natural consequences of the consent they give at the age of 14. So it is necessary that an advance should be made on the present law.

3. Crimes of seduction are no doubt frequent in this part of the country. The amendment of law made in 1925 raising the age of consent to 14 years no doubt succeeded in preventing or reducing cases of rape and seduction of girls for immoral purposes. It seems very necessary to make an advance on the present law by increasing the age of consent.

4. The amendment of 1925 raising the age of consent to 13 years has been no doubt effective to some extent among the higher classes but among the lower classes it is not sufficiently effective. I propose that age of marriage should be increased to 14 years and be codified.

5. The usual age at which girls attain puberty in this part of the country is 15th or 16th year. It differs in different classes and communities. Among the well-to-do classes it comes sooner than among the poor classes. The majority are of poor class. They are ill fed and ill clad. They attain puberty later. By the 16th year all classes of girls attain puberty.

6. Cohabitation is common in this part of the country among almost all the classes in which child marriage is allowed and practised before puberty's. Soon after puberty and even before the girl completes 13 years. These cases do not come to court.

7. I do not attribute the practice of the early consummation of marriage to religious injunction. It has become a practice for the last few centuries owing to certain circumstances.

8. The "Gaona" ceremony is generally performed in this part of the country but it is not always necessary that it should be performed before the consummation of marriage. It is performed generally before the attainment of puberty.

9. I consider that the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

10. At the age of 16 years a girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. I have come across cases in which cohabitation before puberty, or after puberty but before physical development of a girl resulted in injury to her health or body and prejudicially affected her progeny. The age at which marriage took place was between 13 to 14. Her health was poor but after she gave birth to a child her health became shattered. The child itself did not survive long.

12. I consider that early consummation and early maternity are responsible for high maternal and infantile mortality. There is no doubt that early marriage and early consummation are responsible for ill health, and vitally affect the intellectual and physical progress of the people.

13. There has been further development of public opinion in this part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925. It is not general but it is confined to the educated classes.

14. Women in this part of the country do not favour early consummation of marriage for their children.

15. Difficulties have been experienced in determining the age of girls in connection with offences under Sections 375 and 376 of I. P. C. I suggest that registration of birth should be maintained on a stronger basis and should be maintained through a more reliable and responsible officer.

16. The difficulty or margin of error in determining the age will not be materially reduced or minimised if the age of consent be raised to 14 years.

17. Extra marital and marital are different kinds of offences. The nature and amount of punishment as has already been prescribed by law (i.e., I. P. C.) is sufficient.

18. The procedure of trials for such offences requires no change.



19. I do not suggest any other safeguard beyond those existing at present against collusion to protect to offender or against improper prosecution or extortion.

20. I consider that legislation fixing the minimum age of marriage is likely to be more effective than the penal legislature fixing a higher age of consent for marital cases.

21. The progress of social reform by means of education and social propaganda is no doubt good and will have good effect but it will take a very very long time and expenditure to educate the masses. At present it would be better and preferable to strengthen the penal law to secure the object in view.

**Written Statement, dated the 17th August 1928, of Rai Bahadur Pandit SHYAM BEHARI BISRA, M.A., Retired Magistrate and Collector, U. P. and Ex-Member of the Council of State, Golagunj, Lucknow.**

1. Yes, there is plenty of dissatisfaction, and I have heard many complaints. It is pointed out that the age of consent should be raised at least to the age of majority in case of sexual intercourse by outsiders and to 16 years within marital relations. At the same time it is generally felt that the penalty should, in the latter case, be limited to a substantial fine only with imprisonment in default.

2. (1) I think there is absolutely nothing to justify the retention of the present age of consent which is decidedly too low.

(2) Public opinion of at least the enlightened section has been markedly aroused in favour of a substantial advance, while even the masses have begun to feel the necessity of some advance. There is, so far as I know, no real religious sanction in favour of the performance of marriage at a tender age, much less its consummation. The masses will think to-morrow as the enlightened people think to-day, and no serious opposition to an advance is to be anticipated. I think we should be guided by medical opinion in such matters.

3. Such crimes are frequent enough. It is too early yet to form an accurate estimate of the effect of the amendment of the law made in 1925, but some good effect seems to be inevitable. But that advance was very slight and halting, and I certainly think that a further substantial advance should be made as suggested under item 1 *supra*.

4. There has been some improvement under (1) and (2) of this question, but very little under (3). As already stated, however, it is too early to form a definite opinion in so short a time. It is necessary to raise the age of consent as suggested under items 1 and 3 *supra*.

5. Girls in U. P. usually attain puberty between the ages of 13 and 15 years there being differences in cases of girls belonging to different classes of society, but real development is attained at the ages of 18 to 20 which should be the right age of consent.

6. Cohabitation is not very common before puberty, though cases occasionally do occur, but it generally takes place soon after puberty and before the requisite development of the girls concerned, specially in cases of the better classes. Cohabitation before the age of 13 in case of girls is not very common, but such instances are not quite rare. Cases seldom come to courts, specially within marital relations.

7. The practice of early consummation of marriage is no doubt traceable to what is erroneously considered a religious injunction, but it is really based on mere "custom" which as Dr. Sir R. K. Bhandarkar has rightly remarked, "is our religion". So far as I know there is really no such religious injunction.

8. Gaona is usually performed in U. P. among the higher classes of the society. It generally coincides with the consummation of marriage, and is meant for that purpose. It is not necessarily performed after the attainment of puberty, while very little regard is paid to the requisite physical development of the girl before

consummation of marriage. The ceremony known as "Garbhadhan" seldom formally takes place at all.

9. I certainly do not think that the attainment of what is technically called puberty is a sufficient indication of physical maturity to justify consummation of marriage, and, I think, I am strongly supported by the best medical opinion on this point. A girl's physical development may be considered enough to justify cohabitation after she has attained the age of at least 18 and in many cases of 20 years. Sexual intercourse with a girl of under 18 years of age is frankly most improper while it is really criminal if she is under 16 years of age.

10. A girl cannot be expected to be competent to give an intelligent consent to cohabitation, with due realization of consequences, before the ages of 18 to 20 years or even a little more.

11. I remember some such cases but cannot give details.

12. I most decidedly hold that early cohabitation and early maternity are largely responsible for high maternal and infantile mortality. They are also responsible for general physical deterioration of the people and for their reduced longevity. It is well known that our average lives are considerably lower than those of the western races among whom such practices are almost unknown.

13. Yes, resolutions have been passed by many caste conferences and at other meetings in favour of an advance and people freely admit this in conversations. One such resolution was passed at the Kanyakubja Conference on my own motion *unanimously*, just over a year ago. Opposition is mainly due to misapprehensions and fear of police interference in domestic life.

14. Unfortunately many ignorant women do favour early consummation of marriage for their children mainly to pander to their great desire of becoming grandmothers as early as possible. An improvement is, however, now perceptible even among them, specially in the better classes.

15. I do not remember any such case, though it is a fact that age can be ascertained with greater accuracy after than before puberty. Medical examination is the only reliable test. Enhancement of the age of consent would help in this direction also.

16. Yes, if it is raised to 15 or 16 years at least, and preferably to 18 or 20 year in cases of extra-marital relations.

17. I would certainly separate extra-marital and marital offences into different offences altogether. In cases of the former the present penalty must be retained or even a minimum of say five years' R. I. laid down. But in cases of marital relations, a fine up to Rs. 1,000 should do if the girl is at least 14 years of age, while the punishment may extend to two years' imprisonment of either description and fine if the girl be of under 14 years. Also in the latter case the police must have no power even to make an informal enquiry into the truth or otherwise of any information that may reach them; they should only pass on the information to the sub-divisional magistrate who can, if he thinks fit, proceed to make preliminary enquiries and then proceed with the trial if necessary.

18. I think there need be no difference in procedure of such trials, except as suggested above.

19. Marriage itself may be stopped before the girl is at least of 15 or even 16 years of age and the boy of at least 20 or 21 years. Cohabitation occasionally takes place even before the "Gaona" ceremony, and therefore it is necessary to tackle the question of marriage itself. The chaukidar should make a report about all cases of infringement of the law, but the police should proceed in cases of marital offences as suggested under para. 17 *supra*.

20. Both the measures should be adopted, though the fixing of a higher age of consent for marital cases would naturally be preferred by the masses to fixing the minimum age of marriage.

21. Most decidedly the strengthening of the penal law is absolutely necessary, if it is really intended to secure the object in view. To rely on the progress of social

reform by means of education and social propaganda would be to rely on a broken reed; the latter would take unconsciously long to prove effective, perhaps even centuries in many cases.

**Written Statement dated the 12th August 1928 of Mr. NILAMBER PANT, B.A., LL.B., Advocate, Naini Tal.**

1. No dissatisfaction with the state of the law as to the age of consent in sections 375 and 376 of the Indian Penal Code has been felt in these parts of the country. The reason for this would be illucidated in the replies of the questions answered hereafter. The public opinion is already against the sexual intercourse by a man with the wife of another man even after the death of the latter. Hence the public would have nothing to say against the age of consent even if it is fixed at 40, 50 or 60. To the public excluding the so called educated class, "Frailty thy name is woman," will ever hold good. Whether consent or no consent in adultery the public naturally considers the man to be a criminal and a woman a sinner and that too in rare cases. The general statement of the public is that "such and such a man spoiled such a woman and ruined the house of the husband, if any". The real difficulty by "the increased age of consent" is felt by the European Judge who feels keenly that he is sitting there not to please the public but to do justice and that too in accordance with law. Hence any increase beyond 14 years really adds to his difficulty. Formerly the tendency of European Judges was to punish severely or even beyond the expectation of the public, the accused who was guilty of raping a tender girl and the evidence of a doctor who found "rupture" and "penetration" was quite convincing to them, notwithstanding certain discrepancies in the other evidence. But the raising of the age to 14 has materially added to the difficulties of the Judge. He is now more inclined to disbelieve the doctors in matters of age rather think their evidence conclusive. The result is that advantage of this prejudice is taken by even the most heinous criminals who slip away from the hands of justice.

2. The above circumstances, it is believed, will rather favour the view retaining the law of the age of consent as it is. The question of "penetration" has already been made difficult by the increase of age of consent to 14 years of age. The Judge who understands the human nature and is alive to the facts that even saints could become a dupe or prey of a seemingly simple girl, will have the most difficult problem to solve if the age of consent is still raised to 16. It is true that a female is a female and the male who will generally be her senior in age is in a better position. But, nevertheless, a girl of 13 and upwards can think and carry out plans at times which a male of whatever age he might be cannot even dream. Moreover a girl might simply serve as a tool in the hands of some conspirator or conspirators who might well throw a very formidable foe of their own into dung on under this "increase of age of consent" and even the most intelligent and just Judge may have to yield unconsciously owing to this "injurious provision" in law. On the other hand, if such a roguesy is detected in one or two cases, the judge would afterward develop prejudice against prosecution and the accused may make the best of the prejudice. In any case the increase of age of consent is unnecessary. After the age of 14 a young girl does develop sexual appetite. But her appetite is not all what a male has to see. Sexual intercourse by a man with the wife of another is already punishable under section 497, I. P. C. Sexual intercourse without consent is a rape. Hence the only difference is of punishment. Even Manu, the law giver of the Hindus, makes distinction in punishment. He does provide punishment for sexual intercourse with the wife of another, but would mitigate the punishment when the girl is a consenting party (*vide* Manusmriti, Chapter VIII, shloka 364, also 352 to 358). Hence the difficulty could be solved very easily if section 498 or 497, I. P. C., is made cognisable after a report from the husband. At present there is much difficulty in securing a conviction in section 498 and 497, and the complainant will try his best to put the case under sec. 376, I. P. C., in order to avoid expenses and worry and

harass his enemy without much attempt by the making of an advance on the present law.

3. The crime of seduction is more frequent in this part of the country rather than of rape. It cannot be said with any justification that the amendment of the law made in 1925 raising the age of consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state. But the improper seduction of girls for immoral purposes has to some extent had restraining effect which would otherwise by the frequency of motor traffic, have reached the zenith. The said amendment has therefore been very helpful.

4. The amendment of 1925 raising the age of consent within the marital state to 13 had no effect in these parts as the husband rarely approaches his wife before 13. Hence the law of its amendment stands like a dead letter. It made no effect either (1) by postponing consummation of marriages (2) by stimulating public opinion in that direction, or (3) by putting off marriages beyond 13. But it was a curious coincidence when the amendment was being discussed in the Assembly, the public opinion in higher class, particularly amongst the college students, an idea developed and gave root to the effect that they preferred to marry a girl of 16 rather than a girl of 14 or 15 what to say of 13. Consequently the marriageable age which was only 10 to 12 in girls rose to 16 or even 17 amongst the higher classes automatically without the least notion of the law on the subject.

5. In these hills full puberty is attained as a rule at the age of 16. But in exceptional case it may be attained after 13 and as also after 18. The latter variations depend on the climate and development of growth. Besides it differs in different castes and communities or classes of society. People living in towns or adapting themselves with town habits are a bit earlier in this direction, as also people indulging in obscene talk and matters, i.e., whose profession is begging by singing and dancing and other such things may develop immature puberty.

6. Cohabitation (1) before puberty is not common in these parts but it may be indulged in soon after puberty. It is rare before the girl completes 13 years. As stated above there are very few marriages amongst higher classes now for the last 3 or 4 years before 13 years of age. In the agricultural or trading classes even when marriages before 13 take place they never cohabit before the wife reaches her 14th or 15th years. Such cases have never come to the courts of Kumaun.

7. No. The practice of early consummation of marriage before or at puberty whenever it exists cannot be attributed to religious injunctions. I speak of particularly Hindu religion. On the contrary it may be said to be against the religion as the satisfaction of lust is against Vedic teaching and cohabitation is allowed only for progeny. There is a text of Manu (*vide* Shloka 45, Chap. III) wherein the words "Ritukala bighamisyat", etc., occur. In this text "ritukala" is sometimes misunderstood meaning when menses appear but in reality it means "when time for conception appears" that is to say when the wife feels extreme desire. The penalty for the breach of the rule is laid down by Parasara as "Ritusnatam tu yo bharyam sannidho nopagachchhati-ghorayan bhruna hatyayam patati natra sanshaya". Which means that "the man, who being near his wife and the wife has taken bath after menses, does not go to her is as a sinner as the destroyer of foetus." Here the words "upgachchhati" requires consideration. The meaning probably appears to be that the ties of a conception is after the fourth day of the menses. It is not after every menses. But it may occur any day after the menses when the wife has attained proper age. Hence the husband present before the wife should go to her and the words "he should cohabit only when signs for conceiving appear" seem to be understood in the passage.

8. Gauna and Garbhadhan ceremony are usually performed in our part of the country particularly by the higher classes of people. But Gauna is quite a different thing from "Garbhadhan." Gauna or Duragaman is the ceremony when the bride goes to her husband's family after the marriage. Formerly when the girls were married at the age of 10 and under this ceremony took place after 5 years. But now when the girls are being married after 13 this ceremony takes place generally within the fortnight of the marriage nothing as to the consummation of marriage is

attributed to this ceremony. It is simply bride's going to her husband's house *second time*.

The word "Garbhadhan" denotes "taking place of conception." The word denotes even more than real consummation. But in practice it sometimes coincides or is anterior to consummation of marriage. In the hills probably for decency another word is used for Garbhadhan. It is called "Ganeshpuja" significant probably of the very beginning of matrimonial relations. But this ceremony can never take place before the appearance of the menses. It is generally performed after the attainment of puberty, it may be just after or long after. There is no limit but must be before conception.

9. Mere appearance of menses is not, I think, puberty, nor is it a sufficient indication of maturity to justify consummation of marriage. In India, I think, a girl of 16 years of age when healthy enough is considered to be the ideal, "kalan Narhanti Shodasin" is generally spoken of, and no Hindu ever thought of a girl wife below 16 becoming a bed mate. Even if the sufficient allowance be put for the degenerated growth of the present generation consummation at the close of 15th year when the girl is healthy may to some extent be justified without injury to her own health. But 15 is not the fit age for conception. I would think conception earlier than 20 would spoil the health of both the child and the mother, notwithstanding some exception to the rule. The notion that the conception at the age of 19 of a wife is not lucky is not without significance. Probably conception during "teens" was considered injurious both to the mother and child, and as a matter of fact it is so.

10. The phrase "intelligent consent" is rather very difficult. It could be safely said that a girl in India (or probably in the World) will never be competent to give an intelligent consent to cohabitation with a due realisation of the consequence.

There are two cases when cohabitation takes place, (1) when the male is attracted tempted and feels desire for his satisfaction and induces, coaxes influences the female to yield to his wish, (2) when the female feels desirous and seduces the male.

In either case her own heart is the judge whether she is a consenting party. In the first case he may not be consenting but may have to yield. In the second she must scrupulously hid her consent, show for all external purposes that she is not consenting otherwise she may not fulfil her mission. The due realization of consequences are quite out of the question—can any woman realise what she will have to bear at child-birth at the time of the sexual intercourse.

11. Excepting in few cases of rape, when the victim is a girl of a tender age, or has bad health, I rarely came across cases in which cohabitation before puberty or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny. My own gardener has a daughter-in-law who he says is not 15 years old. Last year a son was born to her. The son died. The mother has not yet regained her health. Her husband is about 20 years old. But on the contrary I know of 2 cases where a girl of 14 years gave birth to a son and the son is now a responsible officer. His father was only 16 or 17 at the time of his birth. In another case the son born of a mother aged 14 died after attaining the age of 24.

12. Early consummation and early maternity may not directly be responsible for infant mortality, but it does affect the nation, mentally, morally and physically. It is undesirable and injurious in every way. The Hindu religion prohibits marriage before the age of 36 years. Making every concession the age of 18 years should be the minimum (*vide Manusmriti, Sloka 1, Chapter III*). But the way in which our children are being taught in schools and colleges does not justify the age of 36. It is very easy to preach children to practise Brahmacharya, but it is very difficult to practise Brahmacharya. In order to practise Brahmacharya all the rules laid down by Manu in his Manusmriti, Chapter II, are to be observed. If the boys cannot and do not act according to the rules laid down in the said chapter it will still be a problem for discussion whether the rules or laws restricting early marriages will do good or harm to the people or nation.

13. The public opinion is a peculiar expression. It is as difficult to understand as the public opinion itself. Every one likes truth but very few speak or like to speak the truth themselves. Similar is the case in other opinions. In my opinion any restrictions coming from the Government in matters of marital cases must be badly felt by every male member if he gives his opinion after some consideration. As to extra-marital cases I have already dealt with the question and even the extension of the age to 50 years will not be objectionable to the male population of the public. Hence the public appears to be quite indifferent in marital cases but are in favour in extra-marital cases of the amendment of law of the age of consent in 1925. It is public and not confined to certain class only.

14. I do not think that women in our part of the country favour early consummation. On the contrary I think they try their best to avoid consummation as long as they can and do not allow the husband the opportunity of being alone with his wife if it lies in their power.

15. Great difficulties have been experienced in determining the age of girls in connection with offences of 366, I. P. C., and 366A, I. P. C., after the amendment of 1925. In sections 375 and 376, the difficulty has not been so great, as very few cases of involving the doubt took place. Of late Doctor's evidence was of some value but lately the courts do not attach much importance in such evidence.

I think the registers of birth and death that are kept in villages and towns should be well preserved in headquarters and would serve as an untainted piece of evidence and will be further corroborated by the evidence of the doctor, and other such persons. In those registers besides father's name the name of the person born or died must be mentioned.

16. The difficulty or margin of error in determining the age will not be materially reduced or minimised if the age of the consent is raised to 14 years or above, but it will have contrary effect. For when the age of consent is 13 years or 12, there is little margin of 1 or 2 years because a girl of 11 or 12 years is different from a girl of 14 or 15. Now even a woman of 20 could claim to be only 15 or 14. There would be no valid test in certain cases.

17. Yes I would not be inclined to regard both offences with the same light. The highest amount of punishment I think is quite adequate in the law as it exists.

18. The trial in marital cases should not have much publicity. It may be held in camera.

19. The problem of safeguarding against collusion to protest the offender or against improper prosecution or extortion is not very easy to solve. Nor can it be disposed of in a few lines. A thorough analysis of the bent of the mind of the people has to be gone through. The question of ruler and ruled has much to do in the matter. The public is slow in believing that it is they on whose behalf and for whose advantage the criminals are brought before the court. If the cases relating to property and females are tried on the scene of occurrence by the aid of jurors of the locality, and the people are impressed, it is their bounden duty to punish or warn the perpetrator of the crime, I think much of the difficulty would disappear. But the human tendency is to save persons from the gallows however heinous the crime may be in cases of murder and other such crimes.

20. I do not consider that penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. I would be totally against any age of consent in marital cases. But I would see no harm if the age of marriage of a girl is fixed not earlier than 15 and boys not earlier than 20 or 22.

If the public thinks over the matter deeply, neither of the alternatives would be in consonance with public opinion no such law fetters their liberty. It is better that they themselves may make them binding by making them as a part and parcel of their social and religious rules.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda rather than strengthening of penal law.

The more the penal laws develop in numbers the subtler gets the human intellect to avoid and distort them. Just as in scriptures a devil can find them for his own purposes, so in law a *gunda* can find it for his own purpose. In the present proposed law of consent in marital cases a *gunda* has much more room for his activities. It would be rather the very so called amended law which would supply sufficient field to show their skill. As a matter of fact religious social and legal rules curtail the rights of and affect greatly poorer class of people. Rich class can have their own ways of doing things. If laws and religious rules are discarded poorer people may also sometimes enjoy the vagaries of the rich. It is very difficult to find what is sin and what is not. Similarly, what is law and what is not. Even the well framed sections have its fate with the interpretation of a judge who can read it quite differently from the person who framed it. The discussion requires much time and space and hence it is closed here.

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**Translation of Written Vernacular Statement, dated the 27th Safar 1347 Hijri, of Mr. MOHD. ASLAM, Bahrululoomi, Farangi Mahal, Lucknow.**

From the logic standpoint I certainly can never approve of there being placed a legal restriction as to the age of marriage that will render null and void all marriage that are in contravention of the terms of the law. There is no power to render futile and void the sanctions of theology. In the last verse of the 28th hymn of the Holy Quarn it is said "Oh benign Prophet why dost thou declare profane whatever is sanctioned by God". That is to say such things cannot be forbidden. Thus whenever the Holy Prophet was unable to forbid these neither can any one else be authorised to do so. Also all our imaginative expedients not to speak of their being efficacious as ecclesiastical are sometimes not even good enough for practical purpose. Hence we have to depend upon theologic precedents and inspite of investigation, no precedent for restricting the age of marriage can be discovered in the code of theology. On the other hand there are examples to the contrary of the deeds of the Holy Prophet and other eminent religious personages. For instance the Prophet married Lady Ayesha when she was a child. Similarly the Prophets Omar and Ali were married when they had not yet attained to maturity. Here is a plain proof of the validity of infant marriage owing to which the principle has been definitely established in theology. "It is permissible to marry a person who has not attained to majority." There is no restriction of age which accordingly means that marriage can be valid in any and every case. This is recorded in reliable and theologically sanctioned to minors. And there can be no better guard than parents who do not permit seclusion to a married couple till the pair have attained to majority. Hence there is no need of legislation. Thus to legislate against the marriage at the minors would be an intervention of the law. He may give himself up to authentic books on theology. Of course the consummation of marriage is not licentiousness and adultery and thus is liable to fall a prey to serious venereal diseases as well as a monstrous sins before God.

Hence such legislation would be diametrically opposed to the Islamic theology that renders void marriages sanctioned theologically. Anyhow such legislation would seriously interfere with the interests of Islam. Those who oppose the legislation would, I think, be blessed in the next world and those who pose as its ardent supporters merely want to make a play thing of religions and put up a farcical show in the name of liberty.

May Almighty give us all the strength to adhere to the blessed code of theology of Islam.

**Written Statement, dated the 14th August 1928, of Mr. NARAYAN DAS JAIN, Secretary, Jain Sabha, Mainpuri.**

I most respectfully beg to state that a Sabha of all the Jains of Mainpuri City was convened under the presidentship of L. Nanak Ram Jain, on 12th instant, and

that the above said letter together with the list of all 21 questions sent by you were both read and translated in vernacular to them and requested to suggest a reply to them.

2. The Jain people present on the occasion considered well upon the matter and found out that there is no need of giving separate answers of all the questions laid forthwith, and because the purpose of your letter mostly concerns the provisions of sections 375 and 376, I. P. C., the following answers were determined to be expressed to you.

3. The opinions of our Jain brethren are as below :—

- (1) The age of consent provisioned and laid down in the law under sections 375 and 376, I. P. C., should be retained as it is.

Because here the girls are considered to attain their puberty and acquire adequate conscience to enter cohabitation at the age from 12 to 14 years ; and the marriages also occur between these ages. And if any advance be made to the said ages, a dissatisfaction and inconvenience shall arise in holding inter-marriages.

- (2) As to the punishment of rape and crimes, they (Jains) are of opinion that those cases relating to the crimes committed by a husband against his wife may be tried firstly by the headman of our Jain community, appointed by itself or by the Government, and in default of obeying the headman's decision or on next committance, the trial shall be placed before the authorised court by the said headman. The other terms of punishment should be retained as they exist now.

- (3) The evidence, whenever required, can be given only under the conditions mentioned in your letter, awarding travelling and daily allowances to every witness.

4. It is hoped that your committee will add our views in its discussion and bring out its favourable decision in consequence.

**Written Statement, dated the 13th August 1928, of Mr. H. G. BAJEL,  
District and Sessions Judge, Mainpuri at Etawah.**

1. Apparently there does not appear to be any dissatisfaction regarding the age of consent as contained in sections 375 and 376 of the Indian Penal Code, but I think it is necessary that clause (5) of section 375 be amended and the age be increased to 16 years so that immoral activities might be curtailed.

2. In India, as a general rule, the girls attain signs of puberty at the age between 14 and 16. It is wrong to assume that puberty is attained by them when they commence to menstruate and from medical point of view it is absolutely wrong and a sin to have sexual connection with girls who have not attained the age at least of 16 years. Under such circumstances I would think that an advance should be made on the present law and the age of consent should be regarded as 16 years. If this advance is made, it will advance the moral standard of the people and chances of illicit cohabitation would naturally decrease.

3. My experience is that in the western part of the United Provinces cases of seduction and rape are frequent. The amendment of the law made in 1925 no doubt has reduced the number of cases of rape outside the marital state, but there has been no reduction in the crime of kidnapping and seduction. I think that in order to make the law more effective, it is essential to have recourse to whipping. In each case of seduction or rape, the punishment of whipping must be compulsory.

4. Since the amendment of 1925 the consummation of marriage, as a general rule, is postponed, but this postponement is only found among educated classes. There seems to be no change so far as illiterate persons and low classes are concerned. It is not an easy matter to detect such crimes. I think that to make the law effective



it is necessary that there should be education among the masses and steps be taken to have social reforms amongst all the communities. The old ideas about early marriages can only be done away with by spread of education and social reforms.

5. As a general rule, the girls attain the age of puberty between 15 and 17 years. The difference is not material in different castes or communities, though girls in rich families attain puberty at a later stage than the common folk girls.

6. It is my belief that among lower classes cohabitation takes place in a good number of cases before puberty or soon after puberty and certainly before the girl attains the age of 13 years, but such cases seldom come before Court.

7. No doubt persons take shelter under religious injunction as regards consummation of marriage before or at puberty, but so far as my knowledge goes I do not know of any authority which lays down that consummation of marriage should take place before or at puberty. The injunction so far as I know is that marriage should be celebrated before the girl has monthly course, but this does not mean that the marriage should be consummated before the girl attains puberty.

8. Gaona ceremony is usually performed in the United Provinces, but this ceremony is generally performed three years after the marriage. In a majority of cases, among educated classes, this ceremony is usually performed when the girl attains puberty, say 4 or 6 months after attainment of puberty.

9. No. Attainment of puberty cannot be regarded as a sufficient indication of physical maturity to justify consummation of marriage. Physical development of girls is not the same and individual cases are to be considered having regard to the physical development of the girl. As a layman I think that consummation of marriage two years after the girl attains puberty would be safe for her own health and that of her progeny.

10. In India the girl after the age of 16 would be competent to understand the consequences of cohabitation.

11. I know of instances in my own community where cohabitation soon after attainment of puberty has resulted in injury to the health of the girl and also affected the health of her issues. The health of the girl herself is completely ruined and the children always remain sickly.

12. Certainly I do believe that one of the main reasons responsible for high maternal and infantile mortality is early consummation and early maternity.

13. There seems to be some development of public opinion in the United Provinces in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of the law in 1925, but I regret to say that this is only confined to educated classes.

14. Yes. So far as our womenfolk are concerned, they wish to see grandsons as early as possible. They are always in favour of early consummation of marriages for their children, but this is due to illiteracy.

15. In connection with offences under sections 375 and 376, I. P. C., much difficulty is experienced in determining the age of girls. Medical science cannot much help us in this connection. In order to minimise these difficulties, I would suggest that the registration of births be properly kept. It should be made a criminal offence if births are not properly registered and there should be a competent staff to register these births.

16. If the age of consent is raised to 16 years, there is the possibility of overcoming the difficulties of determining the age, but as a general rule by merely raising the age of consent, such difficulties could not be overcome or minimised.

17. Though the offences are the same whether it be extra-marital or marital, but considering the public opinion prevailing in India, it is necessary that there should be a distinction between the two.

21. To curb the evil it is necessary that there should be pro, res in social reform by means of education and social propaganda, but at the same time there should be penal law to secure the object in view so that the people may be afraid of their doings. The former method is a slow one and hence the latter is also required.

**Written Statement, dated the 9th August 1928, of Mr. MOHAN LAL,  
M.L.C., Hardoi.**

1. There is among the thinking public dissatisfaction with the state of law and with the age of consent as contained in sections 375 and 376 of the I. P. C.

2. It is felt that the present age of consent does not sufficiently protect innocent girls who are just on the threshold of womanhood and who need protection most. Moreover the proposed age of consent, is expected to have a very salutary effect in the villages where girls, especially of lower castes, have to go out alone in the fields at odd times of the day and night and where such girls are often victimized by sons of landlords and other men of position in the village.

3. Crimes of seduction and rape both are fairly frequent in this part of the country. The amendment of the law made in 1925 has apparently not succeeded in preventing cases. So far as cases of seduction are concerned in most cases they are connected with the sale of the girls in the western part of the provinces and in the Punjab.

In my opinion the mere passing of a particular measure of law would not make crimes of this sort less frequent. Laws promoting morality depend upon public sanction and support and an intelligent appreciation of the questions of sex. If religious or moral teaching is made a part of the course in all institutions meant for girls either through a state agency or through non-official bodies it will go a long way along with the proposed change in the age of consent.

4. The amendment of 1925 respecting the marital age has not been effective in my opinion in any of the enumerated ways. The only step which appears likely to effect an improvement in this direction is the raising of the age of marriage as proposed in Mr. Sarda's Bill.

5. The age of puberty is different with different people.

(1) Urban...high (about 14) among educated classes, low (about 12) among low and uneducated classes who generally indulge in scandalmongering panchayets and in erotic songs.

(2) Rural...higher in upper classes and much lower in the lower classes on account of their surroundings and temptations and very early marriages.

6. Cohabitation is common even before puberty among classes who marry early. None of these cases come to court.

7. Early consummation of marriage is not due in these parts to religious injunctions. The people are generally ignorant of, or indifferent to the latter. It is mostly the outcome of custom, usage and habit.

8. Gaona is usually performed in this part of the country but the consummation generally takes place even before it except in cases when the bride comes to her husband's house only after the Gaona which is less frequent.

Gaona does not depend upon the attainment of puberty ; in fact it generally takes place one, three or five years after marriage.

9. As a layman I do not like to venture a reply to this question.

10. A girl in India would not be competent before 16 years to give an intelligent consent.

11. I have got a general idea that early consummation does result in injury to her health and prejudicially affects her progeny also. I am unable to cite instances.

12. Certainly early consummation and early maternity are the direct cause of high maternal and infantile mortality. It also retards all sorts of national progress.

13. There has been a development of public opinion in favour of raising of age. All classes feel the necessity for it though the educated classes feel it the most.

14. Women generally like to have a grandson as early as possible, but this wish is only among uneducated and unadvanced classes.

15. Very grave difficulties are felt in determining the age under these sections. Perjury is resorted to and the medical authority in charge of the district is often open to offer from the Pairokars of the accused.

In my opinion the registration of births should be more strictly enforced through municipal agency in towns and through tahsil authorities in rural areas.

16. To my mind, as a layman, the answer to this question is in the negative.

17. I would propose separation of extra-marital and marital offences. For the latter the maximum punishment should be (1) imprisonment of either description for one year, or (2) fine up to 1,000, or (3) both.

18. So long as the judicial and the executive are not separated, I think it would be better to make marital offences triable directly by the Sessions Judges without the necessity of any inquiry and commencement by a magistrate.

19. The existing safeguards appear to be sufficient.

20. I think legislation fixing minimum age of marriage would be more effective than any penal legislation and the former would be in consonance with public opinion too.

21. Both should go side by side. None can succeed alone to bring about the desired reform.

**Written Statement, dated the 13th August 1928, of Mr. R. D. CHANDOLA,  
Honorary Secretary, Naini Tal Week Association, Naini Tal.**

1. The people in general are ignorant of the state of the law as to the Age of Consent as contained in sections 375 and 376 of the I. P. C. and so are indifferent to the effects of the provisions contained therein, but those who are alive to the importance of the subject matter of the aforesaid sections are surely not satisfied with the law in question.

2. The circumstances justifying an advance on the present law are—

- (1) the gradual deterioration, physical and mental, and
- (2) the greater possibilities of the cases of seduction and rape.

3. The crimes of seduction or rape are not frequent in our part of the country, but this is due to the general tone of sexual morality that prevails there. The amendment of the law in 1925 raising the Age of Consent to 14 years has not to the desirable extent succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. To make the law effective, it is submitted the Age of Consent should be raised still higher, that is, to 18 years.

4. The amendment of 1925 has not been effective in protecting married girls against cohabitation with husbands within the prescribed age limit by postponing the consummation of marriage though it has stimulated public opinion in that direction and has to some appreciable extent succeeded in putting off marriage beyond 13 years of age. To make the law effective, it is proposed that the Age of Consent be fixed at 18, marriages below that age be prevented by legislation, and all marriages be registered to show the ages of the parties married.

5. The usual age at which girls in this part of the country attain puberty is 16 with a negligible variation in very rare cases. And this holds good in the case of all the castes and communities.

6. Cohabitation before puberty or before the girl attains the age of 14 is not at all common in our part of the country among any class of people though some very rare cases of this nature come to the courts, but cohabitation soon after puberty is not rare even here.

7. The practice of the early consummation of marriage before or at puberty cannot in any case be attributed to religious injunction.

8. The Gaona ceremony is in our part of the country usually performed anterior to the consummation of marriage, it is not necessary that this ceremony of Gaona should be performed after the attainment of puberty. But the Garbhadan ceremony is not and cannot be accomplished before the attainment of puberty.

9. To my mind, the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. And a girl's physical development may at the lowest be considered enough to justify such consummation without injury to her own health and to that of her progeny, if it take place four years after puberty.

10. A girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences when she has attained the age of 18 years to 20 years.

11. Though I have not personally come across such cases as are referred to in question No. 11, yet the injuries contemplated by it may very well be imagined.

12. I do consider early consummation and early maternity responsible to a very large extent for high maternal and infantile mortality or for many other results vitally affecting the intellectual or physical progress of the people.

13. Since the amendment of the law in 1925 there has been a considerable development of public opinion in our part of the country in favour of an extension of the Age of Consent, but it has been limited only to those who know the importance of the problem.

14. The answer to this question is in the negative.

15. Yes, such difficulties are generally experienced, and to deal with them I would like to suggest the registration of the date of the girls when they are born and also when they are married.

16. Yes, raising of the age of consent above 14 years will materially help in determining the age of girls in connection with the offences under sections 375 and 376 of the I. P. C.

17. The distinction between the marital and the extra-marital offences and the amount of maximum punishment prescribed therefor in the Indian Penal Code would, in my opinion, require no change for the time being.

18. For the trial of these offences, the procedure prescribed at present need not be changed.

19. No.

20. In our part of the country the penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage and this view is in consonance with the public opinion here.

21. I should rely on both, neither of which should be neglected.

**Written Statement, dated the 17th August 1928, of Mr. HEERA BALLABH PANDEB, B.A., LL.B., Vice-Chairman, District Board, Naini Tal.**

1. Yes.

2. I am in favour of the second alternative, taking deterrent aspect of the law.

3. It is difficult to come across specific instances, but they are not infrequent. I doubt if the law of 1925 has been sufficiently published in the villages. I wish posters were issued to villagers pointing out the law and the necessity of convening meetings. Lorrywalas have been great criminals in this respect. Police should be instructed to examine them on their way to the plains.

4. The husbands have not been found to infringe the law in these parts and have never been reckless even when the age limit was 12 years.

5. It differs according to localities. In the town puberty is attained at 12 or 12½ years even, and in the villages it is not sometimes attained even at the age of 16.

6. (1) It is not common but lower caste men residing in towns are very lax in their morals.

(2) Yes, those men who have married twice or thrice are great criminals in this respect; their wives have generally shattered health.

(3) Possibly.

These cases seldom come to the court.

7. No. I know of no such authority, even if there was one. Our men are not so fastidious. It is so merely on account of a lust for (1) money through illicit connection, (2) desire to procreate children soon.

8. Gaona is performed in the hills and is called Duragaman, which means coming of the wife to her father-in-law's place second time. It has nothing to do with consummation of the marriage. The consummation generally takes place long after Duragaman; it should be noted that the cases of second or third marriages have been dealt with in 6 (2). Garbhadhan ceremony even if performed is no hall-mark of consummation or non-consummation.

9. One year after puberty.

10. At the age of 18 or 20.

11. Cannot give specific instances.

12. Yes, to a great extent.

13. Nobody gives a serious thought to it but an economic pressure is already at work to attain this objective in the towns.

14. They do not follow it clearly.

15. It is for Medical Officers to say whether they had to face difficulties. So far as the courts are concerned they are guided by medical opinion.

16. It will be merely minimised.

17. If the age of consent be raised as per Mr. Sarda's Bill it will be very necessary to award a light punishment to the marital offender. I think it should be half of what is meant for others. Even if it be not raised to Mr. Sarda's limit, there should be some difference.

18. No complaints regarding a marital offence be heard unless they emanate from proper guardians, and the case be heard *in camera*.

19. No.

20. I agree to the latter, but both will be more effective.

21. Yes, the former so far as it has helped any country.

### **Translation of Vernacular Written Statement, dated the 3rd August 1928, of Mr. RAM SAWRUP, President, Arya Samaj, Moradabad.**

1. In my opinion based upon suggestions laid down in the religious books the age of consent should not in any case be less than 16 years.

2. (a) Should not be kept, *vide* answer to question No. 1.

(b) Should be done, *vide* answer to question No. 1.

9. It is evident from medical texts that marriage of girl should not be performed under 16.

11 & 12. Nearly 90 per cent. of girls suffer from various diseases when they are married under 16, and most of them join the majority before they have attained puberty.

In the first place they die issueless and if perchance there is any it is premature. Most of these die in their infancy and those who live are a mere skeleton of bones and breed misery and misfortunes for the posterity.

13. The public opinion is in favour of raising the age of consent.

15. They have to face multifarious misfortunes and troubles.

16. If the age of consent is raised the offspring is likely to be robust and well built and will not fall victim to the doctor's box.

20. To fix the age of consent will be an absolute benefit for girls who will be rescued from various calamities.

21. Legislation would be the only proper remedy for checking this prevailing nuisance of early marriage.

**Written Statement, dated the 17th September 1928, of Mr. KANHAYALAL MISRA, Retired Private Secretary, Balrampur.**

1. There is no dissatisfaction proper among the general public with the present state of the law, but the educated and advanced people do feel that 13 years is rather low and should be raised to 14.

2. Early or rather child marriage introduced here during the last (about) 400 years has already resulted in the physical and intellectual degeneration of the Indian races and it will be disastrous if this is not effectively checked and an advance made on the present law.

India is a poor country, while living has grown expensive and foodstuffs of nourishment like milk and ghee very dear. So development is further retarded and maturity attained at a higher age, but the tyranny of the comparatively long established custom of early marriage prevails and needs a check.

3. At least crimes of seduction are fairly frequent. The period of 2 years seems to be too short for the amendment of the law to have made any appreciable effect. I am surprised to notice that some educated persons do not even know of the amendment of 1925.

I should recommend a further advance on the age of consent.

4. Long before the year 1925, there has been a partial awakening in the public against the pernicious consequences of early marriage and early cohabitation; and this awakening rather than the amendment has resulted in (1), (2), and (3) here and there to a very limited extent.

Legislation fixing 14 as the minimum age of marriage is likely to be more effective.

5. In this part of the country, girls attain puberty at 13 as a rule, but there are always exceptions.

In the rural population and lower castes the age is higher.

6. No, not before puberty anyhow.

7. There are religious injunctions binding early performance of marriage, as those in 'Shighrabodha,' a book of the Mohammedan period on Astrology. Penalty prescribed is also of religious nature, e.g., being sent to Hell.

I know of no religious injunctions demanding early consummation of marriage.

8. 'Gaona' and Garbhadhan' are two distinct things and ceremonies.

Generally a girl comes to her husband's just after the marriage, then goes back to her parents and returns again. This returning is called *Dwiragaman*, literally 'coming for the second time', and 'Gaona' is a corrupted and abbreviated form of 'Dwiragaman' through gradual stages—'Agaman', 'Gaman', 'Gawan', 'Gauna'. In Gauna there goes a *Barat*, the bridegroom's party is entertained and dining presented by bride's parents just as in a marriage, only the scale not being more than half of that marriage.

There is no time fixed for this ceremony. If the husband, and wife, especially the latter, happen to be quite young, 'Gauna' takes place, one year, 3 years, or even 5 years after the marriage. On the contrary, if the parties happen to be mature, this is done just after the marriage, rather along with it, and consummation generally

takes place at the Gauna time, with a certain ceremony, that particular night being called 'Subag-rat' or night of Saubhagya.

'Garbhadan' (Garbhadhan), meaning 'impregnation', is cohabitation and the time prescribed for it is any time 4 days after the flow of menses stops (not necessarily the first menses) and within 10 days of it.

9. No. Proper physical development of a girl is not before 14.

In the exciting and sensual atmosphere, puberty is attained earlier but maturity is based on the solid foundation of physical development.

10. About the age of 16.

11. Cohabitation before puberty is ruinous and before full physical development makes both the mother and the child weak and sickly, in most cases dragging the mother down to consumption and premature grave.

12. Yes, certainly.

It is interesting to note that among the aborigines of Africa a girl's parents charge a penalty to her husband, if the wife dies on the occasion of the first delivery.

There is a kind of courtship prevalent among them and marriages take place after maturity. At a small distance from the population, there is sort of a house which the bachelors and maidens resort to, with their parents' implied consent.

13. Confined only to educated and advanced classes. Most of the people do not even know the amendment of 1925 yet.

14. Such women generally as are longing for grandchildren for some reasons.

15. Yes. Raising the age of consent is a great remedy to minimise these difficulties.

16. The higher the age of consent the more materially the difficulty or margin of error in determining the age of girls, would be reduced or minimised. Determining the age after 16 is not so difficult.

17. Yes, extra-marital offences are more heinous.

As proposed in Sir Hari Singh Gour's Bill.

18. Yes, as per Sir Hari Singh Gour's Bill.

19. None.

20. Legislation fixing the minimum age of marriage is likely to be more effective for fear of law.

But for ages of girls at least, we shall have to depend on the horoscopes of girls in the possession of their parents.

It is not likely that offences in marital cases will ever come to court. Even among lower classes such offences seldom go to court, and when they do, there is something else at the bottom—some domestic quarrel or jealousy.

21. The progress of social reform by means of education and social propaganda is surely to prove really more effective than law. But this will take ages and so it is hardly prudent to depend on it alone. It is well worth trying along with the law to help the law.

**Written Statement, dated the 11th August 1928, of Rai Bahadur BADRI DAT JOSHI, Advocate and Government Pleader of Kumaon, Haldevani, Naini Tal.**

1. I do not think that there is much dissatisfaction in the country as to the age of consent law contained in sections 375 and 376, Indian Penal Code, and I would not be surprised to find the vast majority of the people ignorant of the amendments effected by Act XXIX of 1925. My submission, however, is that the necessity for a change in the present law should not be judged by the amount of dissatisfaction existing in the country.

In 1891 when Act X of that year was passed, raising the age of consent from 10 to 12 years, the Government was not guided by such considerations and it very wisely disregarded the opposition of the orthodox section of the community, and chiefly of the reactionaries, whose number will continue to be a legion at all times. One single case in Bengal was sufficient to bring to light the brutalities perpetrated against girl-wives and established beyond doubt the absolute necessity of protecting that helpless and unfortunate class, by amending the law as to the age of consent at the time. In the teeth of fierce opposition led in the South by the late Mr. B. G. Tiluk, who had enormous influence with the masses on account of his strict orthodoxy and profound scholarship, the Government enacted Act X of 1891. One has only to turn over the pages of the issues of the "Amrita Bazar Patrika" and the "Mahratta" of those days to find out the volume of excitement and bitterness created against the measure and the odium which the then Law Member Sir Andrew Scopple, incurred by introducing his Bill.

It is both interesting and instructive to find that in 1925 when Act XXIX was passed and the age of consent was further raised, there was not a fraction of the opposition evoked by the Bill of 1891. This shews the spirit of the age and the waning influence of the reactionaries and the ignorant masses who play into their hands, in all matters political or social and especially socio-religious.

2. (1) Change in the law however beneficial and necessary, and for the matter of that any change in anything, is resented by the ignorant and unthinking masses unless and until the reactionaries who lead them by the nose impress upon them, the necessity for it. There is much conservatism yet in the country, and a large number of people have a vague respect for the old and a dread of the new in any sphere. This in my opinion, is the only justification, if it can at all be treated as a true justification for retaining in its present state, the law of the age of consent.

(2) I am all for an advance on the present law, and I feel confident that the Government and the legislature have behind them a steadily increasing volume of public opinion which favours a change in the law. The spirit of the age is without a shadow of doubt for a change, the ignorant masses and their masters and friends—the reactionaries notwithstanding. All opposition whether real or unreal will disappear in the morrow following the pass of an Act of X the legislature raising the age of consent still further. This is very necessary, if girl wives are to be effectually protected from immediate violence to their person, permanent injury to their health, and the consequent deterioration of the whole community.

Basing my argument for a change in the present case regarding the age of consent upon my experience of the Kumaon hills particularly, I firmly believe that the social conditions obtaining at present badly call for a change in the law, in the direction of an advance upon the Act of 1925.

Only a quarter of century back both boys and girls used to be married at a comparatively early age, and cases were very common of the marriage of a boy of 13 or 14 years of age with a girl of eight or nine years, but now owing to economic pressure, the disruption to some extent of joint Hindu family, the sense of responsibility forced by circumstances, and the long series of years spent in school and college education, boys are seldom married before they have attained the age of 20 or 22 years, but the age of girls, among the higher classes is seldom permitted to exceed 11 or 12 years. The necessary result of this is that marriage is consummated within a very short time of its celebration.

The "Gaona" Ceremony which in former times was postponed to 3 and 5 years is now performed, if at all, within a few days—not more than 16 days after the marriage. By the vast majority of the people in the plains, it is either never performed and is not regarded as essential, or is performed at time of marriage. Owing to disparity of ages of husbands and wives the latter are exposed to greater risk now, and I only hope your committee will be pleased to give this circumstance the attention it deserves.

Consummation following close upon the heels of unequal marriages obviously produces very disastrous results to the girl-wives, and their progeny—a reform in



the law. It is also a factor to be considered that the desire for reform has now permeated the Zanana or well to a certain extent, and there is a certain volume of opinion in that quarter which will much welcome the proposed change in the law of age of consent.

The impression in certain quarters is that the Government has become unduly conservative of late, and regards with disfavour any change in the social or rather socio-religious laws of the country. Let me hope that the recommendations which your committee may eventually make on the subject it has got to consider, will tend to remove this feeling and strengthen the hands of the Government and the legislature.

3. Yes. They are. Hill-girls especially of the low caste, have been and are being seduced by people from outside Kumaon. There are sexual centres in Kumaon and Garhwal where people carry on an immoral traffic in girls, and they find for their nefarious trade, a brisk market in the Punjab particularly. Low class Mohamedans visiting the hills as menial servants and petty traders carry off young girls to the places for immoral purposes. It is difficult to say how far the raising of the age of consent in 1925 has succeeded in preventing or reducing cases of rape outside the marital state, but it is quite obvious that the change in the law is calculated to minimise the offence of seduction of girls for immoral purposes, and a further change in the law will tend to produce still better and beneficial results.

4. (1) My answer is in the negative. In my answer to questions 1 and 2 I have dealt with this point in an indirect way. To my mind the remedy lies in raising the age of consent still further.

(2) I do not think the amendment of 1925 has stimulated public opinion to an appreciable extent yet, but it will doubtless have that effect in course of time. Of course from my replies to this part of the questionnaire it should not be inferred that I would like to wait for a further advance in the law, until it is possible to gauge the practical results of the working of the Act of 1925.

(3) The amendment effected by Act XXIX of 1925 by itself, has not had the effect of putting off marriages beyond 13 years, but in many cases marriages of girls now do take place at a later age than that used to do before. I will not say that this result is attributable to the Act of 1925.

5. It is not easy for a layman to answer this question with certainty and confidence. Ordinarily I should think 13 or 14 years is the age of puberty in the hills. In the case of ill-fed and ill-developed girls it may be postponed to 15 or 16 years. But puberty is not the same thing as maturity and it is the latter state which ought to be kept in view in coming to a decision on the question now engaging the attention of your committee. Maturity is not attained before the age of 16 years.

6. (1) Yes.

(2) Yes.

(3) Yes, in many cases, which do not come to law courts for obvious reasons. Except when death follows consummation, we cannot reasonably expect such cases to come to court. Even in a case of death, there is no certainty that the case will come to court invariably.

7. My answer is in the negative. This is a task more congenial to the reactionaries and the orthodox, who will place hope before your committee countless authorities of varying authentically and binding character and try to cloud the real issue. There are authorities and authorities for every position taken up by the protagonists of it. Mr. B. G. Tiluk and those of his way of thinking flooded the newspapers with authorities on "Garvadan" ceremony which according to the numerous authorities quoted from our religious books was essential and which would be interfered with by a change in the law as to the age of consent. Now "Garvadan" is a ceremony which is very very seldom if ever performed in any household. It only exists in our religious books.

Many injunctions of Hindu law are at the present day respected in the breach than in their observance, and it is unprofitable to seek a support either way, in them.

Sense of community at the stage of its culture and civilization is a more important factor in deciding about the laws which can omit it.

**Written Statement, dated the 8th August 1928, of Mr. MATHURA PRASAD, 10, Hewett Road, Lucknow.**

1. The present law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code is defective and ineffective. As it puts rape with immature girls in practically the same category with others.

2. The circumstances in my opinion demand an advance on the present law and treating sexual intercourse with girls under 16 (by their husbands or others) as a crime under a different section than 375 and 376.

3. No, crimes of seduction or rape are seldom heard of in my part of the country in Garhwal. I do not think that the amendment of law made in 1925, raising the age of consent to 14 has succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. In my opinion the police must arrest the offender without warrant, put him in lock up and deprive him of the opportunities of manufacturing defence.

4. The amendment of 1925 has also had little effect in protecting married girls against cohabitation with husbands against the prescribed age limit in any way. I would propose to declare all marriages of girls below 16 illegal.

5. The usual age at which girls attain puberty in my country is 16, at the earliest. There may be exceptions to this which only prove the general rule.

6. If marriage is allowed before puberty cohabitation cannot be considered to be non-existent before puberty or even girl completes 13 years. Such cases can never go to court and reliance on court figures will be misleading in this respect.

7. Yes, the early consent of marriage before or at puberty rests on religious sentiment. Sambarat, Harit, Devab and Manu, all unanimously lay down that it is sin not to marry a girl before puberty (Rajodarshan राजोदर्शन). But Manu himself says in Shloka 89 of Chapter 9 :—

**काममा मरण तिष्ठेत् गृहे कन्यर्क्षतुमत्यपि ।**

**न चैवेनां प्रयच्छेत् गुणहिनाय कश्चित् ॥**

which means that a girl may remain unmarried in the father's house for her whole life but she should not be given in marriage to a bridegroom who is possessed of little merit. Now this clearly shows that if a girl is not married before puberty on account of considerations for the girl's future, there is no sin and Hindu marriages according to Byas, are contracted for begetting progeny. Vide Shloka 14, Chapter 2 :—

**नारदं प्रजायेत् सर्वम्, प्रजायेतेत्यपि श्रुतिः ।**

**गुरुवे सद्य भूस्त्रीवर्भस्य, भूमिनान्येनशक्यते ॥**

which means that Vedas enjoin on every person to beget children but without wife no children can be had. Therefore one must marry.

So, if as stated above the marriage be delayed even after the puberty (राजोदर्शन) in the interests of girl's own future and that her progeny, there is theoretically no sin in it. Besides the Prayaschit prescribed for it is also very simple in Niranya Sindhu's III Chapter :—

**दद्यात् ऋतु सख्यागाहः सक्त क्रन्यायितायदो ।**

**दातव्यैः कापिनिः स्वेत दाने तस्या यथाविधि ॥**

**दद्यात् ब्राह्मणैः सून्यं इति विष्वास दक्षिणं ।**

**तस्यासीत तर्तसंख्यैः वरायप्रतिपादयेत् ॥**

which means that if the father of the girl be rich he must give away to Brahmins that number of cows which the girl has been in her monthly course before her marriage, but one cow is sufficient in ordinary cases and even simply feeding Brahmin by poor ones is considered enough and prescribed : as Prayashchita.

8. "Gaona" ceremony is usually performed in my part of the country soon after the marriage.

9. I do not consider that the attainment of puberty at 16 is a sufficient indication of physical maturity to justify consummation of marriage.

I consider 18 years age be considered enough to justify such consummation without injury to girls' health or that of others.

10. 18 years age should be considered the fit for a girl in India to give intelligent consent to cohabitation with a due realization of consequences.

11. I am neither a lawyer nor a doctor but in my own family and in that of my friends I have seen girls' health being prejudicially affected, in the end dying as a result of motherhood forced on them before full physical development of the girls concerned.

12. Certainly, early consummation and early maternity are responsible for high maternal and infantile mortality and vitally affect the physical and intellectual interest of our people.

13. Yes. There has been much development of public opinion in my part of the country against early marriage.

14. Yes, women do favour early consummation of marriage but their opinion is also undergoing a great change.

15. I have no experience of difficulty in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code.

16. The age should be raised to 16 for rape on unmarried girls being included in the crime.

17. When all marriages below 16 have been declared illegal there will be no marital offences of the kind to deal with and extra marital offences must be treated by the present law except that the offender must be immediately arrested, locked up and deprived of manufacturing defence.

18. Same as the answer to Question No. 17.

19. The best safeguard against improper prosecution, extortion, etc., is to raise the age of marriage of girls to 16 years.

20. I consider that fixing 16 as the minimum age of marriage of girls is moral effective and in consonance with public opinion in my part of the country.

21. The progress of social reform by education and social propaganda needs to be supported by necessary penal law in the case of unmarried girls by raising the marriageable age of girls to 16.

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**Written Statement, dated the 13th August 1928, of the ARYA SAMAJ, Mainpuri.**

1. There is some dissatisfaction, for the present age of consent contained in the sections leaves easy chances of escape to the accused under those sections owing to there being practically no overt physical and medical signs of a character decisive and free from doubts, at this age, as do come into existence at a later period at 16.

2. (1) We don't think there are any circumstances justifying retention of the existing law of the age of consent.

(2) The following reasons for making an advance on the existing law may be given :—

(a) Intelligentsia as well as masses both think that an undue escape of the accused under the above sections can be averted only by raising the age limit to 16.

(b) Raising the age limit to 16 will make the law in agreement with that provided in sections 361 and 366, Indian Penal Code.

(c) The age of 14 was fixed owing to the consideration, it seems, that as it was justifiable in the eye of the public as a whole to let a girl enter the marital state even before 14, putting the consent age at a higher level would work hard; but now the ideas of the people have much advanced.

3. (a) It is very difficult to say whether the cases of seduction or rape should be considered as frequent. But whatever cases do occur they should be considered as forming a blot on the civic condition of the society and as such all necessary steps should be taken for their prevention.

(b) Amendment of the law of 1925 raising the age of consent to 14 (from 13) has not, in our opinion, made any appreciable change in either preventing or reducing cases of rape or seduction for the reason that practically there is no difference in these figures so far as the advent of determining factors of age is concerned.

(c) In our opinion the effective remedy is to raise the age of consent to 16 and the passing of Mr. Sarda's Bill.

4. We think that not any of the means enumerated as 1, 2 and 3 have been effective in serving the purpose.

To make it effective, as we have said above, raising of consent age to 16 and passing of Mr. Sarda's Bill are both essential.

5. The usual age of puberty is 16. There is no appreciable difference in this in different castes or sections of the society.

6. We think it is not so common particularly in any class or classes of people in our part of the country unless it be that all classes are similarly affected in this respect, nor have such cases come to court frequently.

7. Yes we do so. We think that in this country there were had\*<sup>1</sup> times which made it unsafe to let people allow their girls to remain unmarried any longer than they could prevent, and so the Pandits of lead and light in order to avert mishaps reduced the age limit of marriage so as not to exceed 10 and provided that those who are to break this injunction would go to hell\*<sup>2</sup> for the breach;

**\*<sup>1</sup> अष्टवर्षा भवेद्वीरो नववर्षा च रोहिणी ।**

**दशमे कन्यका प्रोक्ता अतउर्ध्वं रजस्वला ॥**

**तस्मात् संवत्सरेप्राप्ते दशमे कन्यका बुधैः ।**

**प्रदानव्या प्रयत्नेन न दोषः कालदोषतः ॥**

**उद्वाहृतत्वेषु रघुनन्दनमित्यादि कृतेषु ।**

That is to say—

A girl of 8, 9 and 10 is styled Gouri, Rohini, and Kannyaka respectively and after the age of 10 she is known as Rajaswala. And so on her attaining the age of 10, the wise ought to be vigilant in giving her in marriage; for the times being unsafe, there is no inpropriety in doing so.

The similar Shlokas are also to be found in Shighra-bodh most vogue in United Provinces-

\*<sup>2</sup>. Penal provision is also inserted in these books such as follows:—

**माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।**

**नयस्ते नरकं यांति दृष्ट्वा कन्यां रजस्वलां ॥ शोभनबोधे ।**

After the girl has become Rajaswala (i.e., has exceeded the age of 10) and remains unmarried, her parents as well as her elder brother, all three fall into hell by not marrying her. And after centuries of practice by the common people,

this injunction became a part and parcel of their nature, and now although the injunction itself be not known to the people in so many words, or at all, those who have not yet come within the sphere of the Arya Samaj teachings in this respect are still dominated either consciously or unconsciously with the idea that by transgressing that limit they would be looked down upon as irreligious in the society.

8. In our part of the country " Gaona " (also known as Dwiragaman meaning literally going second time), is usually performed. In majority of cases it coincides with consummation of marriage. It is not generally performed after the attainment of puberty, rather it precedes it.

9. The word puberty is differently interpreted. It also means full age. But this meaning, too, leaves much room for differences. Generally it is taken to mean that age of a girl at which all external signs about her, like coming up of teats, development of milk glands, and flow of monthly course, are there. But the attainment of puberty is never a sufficient indication of physical maturity to justify consummation of marriage. In our opinion physical development to justify consummation of marriage can exist only some time, say a year or two, after 16 and not before. One of the greatest medical authority in the Hindu medical literature known as Sushrut in his far famous book named Sushrut has, in this connection made very lucid and wholesome statements\* so emphatically as no other medical authority has ever done and we quote them below, as a foot note, for the elucidation of the point.

\* चतस्रोवस्था शरीरस्य वृद्धिर्येवन् सम्पूर्णता किञ्चित् परिह्राणश्चेति,  
तत्र चाषोडशवृद्धिं आपञ्चविंशतैर्येवन्म् आचत्वारिंशेः सम्पूर्णता ततः  
किञ्चिदपरिह्राणश्चेति ।

पञ्चविंशे ततोवर्षे पुमान्मारोतु षोडशे ।

समत्वागतव्योती जानीयात् कुशलीभिषक् ॥

ऊन षोडशवर्षायामप्राप्ति पञ्चविंशतिम् ।

यद्याधत्ते पुमानगर्भं कुक्षिस्थः स विपद्यते ॥

जातीवानचिरञ्जीवेत् औवैद्वादुर्बलेन्द्रियः ।

तस्मात् अत्यन्तवालायां गर्भाधानं न कारयेत् [रक्त सूत्रस्थान]

i.e., The human body passes through four stages, i.e., development, youth ; maturity and decline. Up till 16 it has development ; till 25, youth ; till 40, maturity ; after forty the period of decline sets in. In the eye of competent physicians, male and female both acquire an equal degree of development at their respective ages of 25 and 16.

From the Shlokas thus quoted it is clear that for raising human progeny, 16 and 25 are respective minimum ages for a female and a male. The minimum age of 16 for the female is hardly the age required for full physical maturity. It is after all of the lowest grade. For the higher grades, the ages prescribed are 18-20 and 22 to 24 for females and 36 to 40 and 44 to 48 for males, respectively.

10. Realisation of consequences comes with sound knowledge which is lamentably wanting in India owing to want of mass education. The minimum age for this purpose can however safely be put down at 16.

11. Yes, but it is difficult to give details. We think that a very high rate of mortality of infants, prevalence of disease, and shortness of life in India are some of the evil consequences greatly due to this evil practice. Many a mother loses her life at the time of giving first birth for this very reason.

12. Certainly. Besides maternal and infantile mortality, prevalence of disease amongst women and infants, like consumption; their weak constitution and consequently want of enterprise; their prevention from pursuing high education, shortness of life are some of the results that flow therefrom.

13. Yes, we think it is more or less general.

14. Old women to some extent do.

15. Yes, we think passing of Mr. Sarda's Bill and raising the limit of age of consent to 16 will remove and minimise the difficulties.

If a male not yet 25 raises progeny on a female not yet 16 the result would be that conception will meet the fate of abortion. If, however, it does take place, the child cannot live long. Again if it does live for an appreciable length of time it will ever be an imbecile; and so, let not a couple of less ages do the conception business.

16. The difficulty can be minimised only by raising the age of consent to 16 not otherwise; for at this stage, and not before, a sure test of determining the age is available. The Vedas and other Hindu Shastras are also very out-spoken\* on this point and might be quoted with advantage.

17. Yes. We think the proposed addition of section 376-A will quite do.

18. Yes, and the existing schedule II, sections 376 and 376-A are reasonable and sufficient.

19. Under the present system of law we don't think we can suggest other safeguards than those already existing.

20. In our opinion legislation fixing the minimum age of marriage is likely to be more effective and the same is in consonance with public opinion in our part of the country.

21. We would prefer the former. Progress of social reforms when it has reached a certain stage itself needs the aid of penal law and we think that stage has been reached and that there is no good in waiting for having this reform effected through the instrumentality of social reform instinct. Hindu Dharma Shastras are unmistakeable examples of effecting such reforms through legislature and it is to the credit of the Hindus that, as distinguished from other Shastras, it is the works on law which are named Dharma Shastras, i.e., Shastras which teach them Dharma which the Hindus have always regarded as the most vital and moving principle of their lives.

देवदत्तांपतिर्भार्या निन्दते नेच्छ्यात्मनः [मनुः]

The husband has his wife given by Dewas, i.e., natural forces not at his own accord.

सोमः प्रथमोविविदे गन्धर्वोविविदङ्गसरम् ।

तृतीयोऽग्निश्चेतिस्तुर्यस्ते मनुजाः । [ऋग्वेद मे १० सूत्रम् म०]

The first protector of a woman is Soma, the second is Gandharva, and the third Agni. The man becomes his protector (husband) as fourth.

ब्रह्मचर्येण कन्या युवानं विन्दते मतिम् । अमेनन्देरकाः १ पु० २

अ ३ म० १८ ।

After leading a life of Brahmacharya, a girl should take her husband.

अन्ननेस्तुसत्यलो सोमगुञ्जोतकन्यकाम् ।

ययोधरेस्तुगन्धर्वः रजसा अग्निः प्रकोर्तितः । [मृच्छासंगुष्टि ३। १८ ।

A girl is first resorted to by Soma (a particular natural force) on her having teats well-marked ; then by Gandharva on her possessing well developed milk glands and then by Agni (a third natural force) on her having monthly course.

**प्राग्यतोः कन्याया न दानम् । [मिधातोषेः]**

A girl should not be married before monthly course.

**त्रैविंशवर्षाभ्युदयेत कुमार्यृतुमतोसती ।**

**उर्ध्वतुक्कालादेतस्मात् द्विदेत सदृशंपतिः ॥ [मनु०]**

Let three years pass away after monthly course begins, before a girl should take a suitable husband.

**Written Statement, dated the 12th August 1928, of Mr. M. M. BHAT-NAGAR, B.A., LL.B., Advocate, Bareilly, U. P.**

1. Yes, there is dissatisfaction with the state of law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code. The age is too low for a female to give her intelligent consent with a due realisation of the consequences to her health and of her fitness to undertake the duties of motherhood. At fourteen an Indian girl is quite immature for sexual purposes and certainly not developed enough in intellect to make a start in life as an independent and responsible member of society. Indians have been too much habituated to lean on the crutches of joint or common family to appreciate fully and generally the hardship and misfortune engendered by early maternity. All the same the practice of early consummation makes a wreck of a woman before she should have normally attained the full stature of womanhood. She is a cripple when she should normally have ruled the house. Not seldom the first child born to the girl-mother is lost. The shock attendant upon the loss leaves behind a temperament changed for the worse, a reduction in the capacity of enjoying life and a mentality which tinges the whole future outlook with a gloomy anticipation.

A law which adopts the policy of masterly inactivity towards these problems would not evoke any enthusiasm for it.

2. The circumstances which justify the making an advance on the present law are the following:—

(a) *Consideration of the health of the female herself.*—There is absolutely no doubt that the health of the female child is affected by an act of carnal knowledge if, as it not unoften happens, she conceives before she is properly developed. After this premature experience of maternity the poor girl having lost the normal condition of health and may be burdened with the sense of grief and humiliation at what was only an abortion returns to sexual association before she has had time to recoup herself. The result is a disaster. All power of initiative and enterprise is lost and having been stripped of maidenhood she resigns herself to the role of the family grudge.

(b) *Consideration of the health of the child.*—A child born to an immature mother has to face many misfortunes and has to contend with many difficulties. The power of resistance of the child to disease is of a very low type. It is very poorly fed ; for an immature mother generally fails to satisfy the craving of the child for milk to the full extent. The supply is also not sufficiently rich in food properties and sometimes fails altogether.

Besides, this such a child is deprived of the care and bringing up which an intelligent and grown up mother would naturally give. Such a child is irritable, sickly and weak. To have such children on a large scale is to rob the home of its happiness and is a national misfortune.

- (c) *Consideration of Education.*—A female burdened too early with the cares of motherhood has small chances of intellectual progress, specialised education being quite out of question. Female education, therefore, fails to make appreciable advance. Dark prejudices, absurd beliefs and barbaric customs get preserved embedded in the ignorance of women. Pious opinion not unoften pleads that a girl at sixteen overflows with sex. But that is chiefly due to the fact that the subject which predominantly occupies the brain of a female child from infancy onwards is her sexual relation. Largely she is screened behind the Purda and has absolutely no idea of the multifold activities of the outer world. She does not know how the human brain is ceaselessly occupied and how every single iota of energy is being requisitioned to the unfolding of the beauties of art, nature science. Thus the early growth of the Indian girl in sex is artificial and could by application of remedial measures be brought to accord with nature. Indeed wifehood is not the only profession and idleness the only occupation for an Indian female.
- (d) *Consideration of raising the tone of society.*—Association of men and women for purposes of sport, recreation and business is almost unknown in our midst. If for some term in early life society definitely discourages early sexual association a healthy mixed life is bound to grow up in which the respect of one sex for the other will also increase and both sexes will enter life with greater understanding and advantage. The chapter of female woes and of the singlehanded race of man for prizes of the world may also close for time. Men dyed deep in ideas of sex superiority may not like the change but that the change is absolutely necessary has been decided by the public opinion of the whole world.
- (e) *Economic Consideration.*—Even where the family requires it the income of the family is not supplemented by female enterprise except of course where manual labour is the sole occupation. It is difficult to see why opportunities be denied to women to qualify themselves for the different professions. Why it should not be respectable and possible for them to earn their own bread if so inclined. Unless a definite set back is given to early wifery there seems hardly hope for the female regeneration.

There is also this aspect that the population of the country is growing out of bounds and very soon we will have to face the question of what to do with the surplus population. Even now the head of the family is taxed to the utmost limit of his resources to find means for the support of the overflowing family. Joint family and its counterfeit the common family of the Mahomedans is already working havoc in national economy by being forced to support much beyond its means the worthless and unearning members. We must devise means to stop the overgrowth of population unless we all mean to depreciate in quality and character.

3. Crimes of seduction or rape are not frequent in this part of the country, there having been only fourteen cases of rape during the whole period after the amendment of 1925 and not many important case of seduction during the same period.

The amendment of the law made in 1925 raising the age of consent to 14 years has not so far as my limited experience would warrant me to say succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes.

One of the suggestions to make the law effective would be to raise the age to an appreciable degree. The difficulty of fixing the age of a female either by medical examination or by the register of births so that the female may be proved to be without the shadow of doubt below 14 is responsible for the present state of helplessness. A register of births so far as it relates to the identification of the subject is worthless and medical witnesses have so often confused themselves in matters



of age that they are not much dependable, and cannot be safely trusted. The result is that in cases of rape of females between whose ages and the legal age the margin of difference is narrow the police is reluctant to prosecute. I would suggest the addition in the register of births of a column in which the name of the new born should be filled in as soon as a name is given to him or her and it should not be sufficient to register the birth simply by entering "a boy" or "a girl" in the particular column.

The persons who are guilty of rape or of improper seduction of girls for immoral purposes may be classed into two groups. One group belongs to that class which possesses a criminal tendency to rape young girls and which loses sexual balance at the sight of young girls. This group can be corrected by condign punishment only.

There is the other group, a creature of society belonging to the class which pines for female company and would have been satisfied with mere innocent association (without carnal knowledge) had not society drilled into brain that all females are meant for sexual pleasures and on God's earth there is no use for women except to gratify the passions of the male. This group is bound to decrease by spread of education and the liberalisation of ideas relative to woman. The emancipation of women will see the disappearance of this class.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not had its full trial, moreover the margin of difference between the two ages, i.e., between 12 and 13 is so very narrow that it is very difficult to perceive the effect of the legislation. Public opinion being very apathetic and official opinion being also not very enthusiastic about it proper care has not been taken to enforce this law and the state of things remains the same as it was before the legislation. The Police is also not sufficiently honest in the performance of its duties. It is perhaps the most discredited part of the administration and deservedly so. It is therefore that it does not take the initiative in such delicate matters for fear of arousing an already disgusted public opinion against it. Its weaknesses do not leave it the courage of boldly facing public criticism.

The punishment is also disproportionate to the effort expended in social reform propaganda. An Indian parent considers himself relieved of all responsibility to his female child by providing her with a husband. Such provision is made at such an early stage of the child's life as a mischief amounting to an outrage on the sex of the child is committed. Henceforward the perpetual theme of the child's thoughts, of her relations, and associates is the *husband* and all that pertains to him, so that from this early bewilderment emanates a surprisingly precious sex knowledge and development. The raising of the age of consent is a very indirect way in which a very important issue namely the married state is dealt with. To legislate about marriage itself would be more straight forward and indicative of a desire to advance the society. I would suggest not only a penalisation of early marriage but also the taking of such steps as may lead to the disintegration of joint and common family system where young boys and girls learn over much of sexual matters by associating with young brides and bridegrooms. Marriage should be controlled by licenses and a marriage license should be refused to all boys and girls who are not fully grown up and self-supporting and who cannot provide for themselves separate dwelling house after marriage.

5. The usual age at which girls attain puberty in this part of the country is between 12 and 14 years. Climatic conditions do have an effect upon physical as well as sexual development. The castes, communities or classes of society in India may roughly for purposes of our examination be divided into two groups, i.e., the immigrants from the hills or hilly countries and the people of the plains. In the former the age of puberty is a little later than in the females of the latter. There are other and very important considerations which also affect the age of puberty. Where a girl is well fed and also feeds on animal diet the age of puberty is accelerated but girls feeding only on vegetable and otherwise living poorly have their time of puberty postponed which however in no event goes beyond 14 years.

6. In our part of the country cohabitation is fairly common soon after puberty only in the countryside. In the Kurmi, Kahar and allied classes cohabitation sometimes takes place even before puberty. In fact among people

where child marriages are celebrated almost universally early cohabitation is unavoidable. Puberty is supposed to give a passport to cohabitation. But unfortunately such cases are not brought to court owing to the apathy of the police and the public and a critical and more detailed description would be based on intelligent guessing only.

7. The practice of early consummation of marriage grew up at the time when the institution of early marriage came into vogue. At the period of Hindu degeneracy when attacks from the North-west were frequent and in fact during the time of Mohamadan rule when religious life was very insecure, people devised all sorts of preventive measures to meet the exigencies of the period. Early marriage was also a device of the time. A married girl according to law of the Mohamadans is Haram for the believer. Consequently when parents were living a very insecure life and dreaded being taken as captives of war they began marrying their daughters as soon as possible and invariably before the advent of puberty. Some idea of the mentality of the time can be got from the fact that infanticide was practised on a fairly large scale by the Rajputs and other martial classes of the people simply to avert the contingency of having an unmarried daughter of the family being taken as a captive. Conditions have still not helped the Indians to revise the Rationale of their practices.

People's weakness for fictions in law led to the invention of the authority known as Sheghrbodh, a book prescribing early marriage and religious damnation for the breach. But the authority of the Sheghrbodh is bound to be exploded and it cannot successfully give battle to Vedic authorities which favour marriages of the grown ups. Now the practice is due more to the solicitude of parents to find matches for their children before any disability is discovered to render them unacceptable in marriage. The anxiety is more with the parent of the girl who dares not take the risk of being left with an unmarried daughter in the family, a daughter for whom nobody in the family has any use and who might bring perpetual disgrace and loss of caste to the whole of the family by an indiscreet act of hers.

8. "Gaona" ceremony is universally performed almost in all classes of Hindu society in our part of the country. It generally coincides with the consummation of marriage. It is performed as a rule after the attainment of puberty. It assumes the girl fit for consummation and the mother of the girl would stop it before that period if she can help it. It is performed sometimes within the year of the attainment of puberty but the parents of the girl generally are willing to postpone the "Gaona" if the parents of the boy do not insist an early performance. The thing which really matters is when are the people of the "boy's" family prepared to take the additional burden of the girl-wife after the marriage? Where the burden does not matter "Gaona" is performed without regard to the maturity of the boy or girl and as a rule before it.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. The age of eighteen, five years after puberty, would be a suitable period for the consummation of marriage, without detriment to herself or her progeny. If you want the wife to live a healthy and reasonably long life you must not disturb her growth prematurely. If a child is to be healthy it should not be brought into the world by an imperfectly developed female. Development means the absorption by an individual of necessary elements of growth. If an individual needs absorption of energy herself she is not a fit person to lend energy to the being in her womb. In no case should consummation be sanctioned before the female has attained the age of sixteen.

10. A girl in India would be competent to give an intelligent consent to cohabitation with a due realization of the consequences in no case before the age of 18 years. It requires such a preparation in life to turn out a well equipped mother as a proper intelligence in that respect can not be exercised before that age.

11. (a) A girl was married at about the age of thirteen, came to be in the family way shortly after and within a year of the marriage was the mother of a boy. She underwent the same experience two more times. She is a total wreck now, is a permanent invalid and perpetually complains about all sorts of aches and ills.

- (b) A girl was married at fourteen to a man of 24. The marriage was consummated shortly after. The girl became subject to many painful diseases. Her menstruation was very painful and lasted for a long period during the month. She was dead within two years of the marriage.
- (c) A girl was married at the age of 11. Consummation took place at the age of 12. She gave birth to a child in her 13th year. That broke her health. She did not produce any further children. A year after the birth of the child she began to suffer from irregular menstruation. Slowly she began to decay and became a victim of Pht-hisis to which disease she succumbed in her 15th year having remained bedridden for well over a year.

12. Not only do I consider early consummation and early maternity responsible for high maternal and infantile mortality but also I consider that they are the factors largely responsible for the present degenerated state of the greater part of our people. I feel that it is one of the chief causes which makes the people incapable of any high mental achievement and the race is slowly but surely deteriorating. The energy which should have reinforced the brain is lost substantially by a too early indulgence in sexual intercourse. Physical development is retarded and the outlook on life becomes cowardly. The whole system is affected by the early waste and capacity for sustained effort is reduced to a minimum. History may also be referred to corroborate the fact that all great men of the world were brought into the world by mothers whose ages ranged between 30 and 35 years at the time of the birth of these men.

13. The amendment of 1925, as said before, has not had its full trial and it is difficult to speculate about its effect but the thinking section of the people deplore the evils of early marriage and all efforts are concentrated on remedying the evil consequence by stimulating public opinion against the practice. Public opinion is definitely in favour of an extension of the age of consent and it is realized that any causes which might have necessitated the institution of early marriages in the past have long since ceased to operate and open advocates of early marriage are not much in evidence.

14. Women in this part of the country where they exercise any influence and are respected for the soundness of their views discourage early marriages, especially women of the upper classes protect their girls from early intercourse.

15. Yes, difficulties have in the past been experienced in determining the age of girls in connection with offences under sections 375 and 376. Some suggestions have already been made, *vide* page 4 in answer to question No. 3.

16. Yes, the difficulty or margin of error will in determining the age be materially reduced or minimised if the age of consent is raised to 16 years. It is very difficult to fix with certainty the age of girls between 12 and 14 years and the medical men also prove of no help in respect of such cases.

17. Yes, marital and extra marital offences should be separated into different offences. The extra marital offence should receive a more serious punishment. The nature of the offences can hardly be distinguished and a husband has obviously better opportunities of knowing the correct age of the victim than a stranger. While the degree of heinousness is perhaps identical the husband should be lightly punished if only for the reason that a light punishment will not shock the susceptibilities of society. In the case of the marital offence six months simple imprisonment may be kept as maximum while in the case of the extra marital offence the punishment as in the code prescribed is simply barbaric and disturbs the sense of proportions of the judge meting out the punishment. Of course a surplus population may be treated as one may but it is hardly fair to prescribe such a long length even as a maximum. Five years as a maximum would serve the ends of justice in any case. It is not suggested that there should be any concession to the crime. It is simply reminded that the end of all justice is correction and not only a brutal revenge.

18. All offences within or without the marital state should be tried with the help of the jury in a court of session.

19. As a safeguard against collusion it is sufficient to keep the offence cognizable. It is recommended that an investigation in these offences should be made by a police officer not below the rank of an Inspector of Police. A protracted trial in these cases affects evidence prejudicially and it is advisable to expedite such trials to prevent witnesses being won over or the prosecutrix changing her mind.

20. Legislation fixing the minimum age of marriage is certainly more likely to be effective than the penal legislation fixing a higher age of consent. The former will be a direct and straightforward course of giving protection to minor females against a premature cohabitation. As suggested already a marriage license should be necessary to the validation of marriage and such an important institution as marriage by common consent should not be left at the mercy of ignorant relations. Public opinion it is feared will resent the legislative interference of the direct type but the resentment will be unreasonable and will not stand the test of time. A people nursed in the belief of the sacred origin of laws resent all legislation specially in social matters but the legislator cannot abdicate his functions out of respect for the belief. A Government actuated with the best of motives for the weal of its people would not be deterred from undertaking a much needed and belated legislation.

21. The answers contained in these pages point out the many considerations, which should weigh with the legislator in dealing with the problem. It is, however, futile to wait till the progress of social reform by means of education and social propaganda brings about millennium. Not only the penal law be strengthened but direct legislation affecting social relations be also undertaken for the eradication of the social evils. It is expressed as a pious hope that the deliberations of the committee will not be influenced by considerations based on concessions to a weak and disintegrated public opinion, and bold and wise proposals will emanate from such a representative body.

**Written Statement, dated the 13th August 1928, of Babu JITENDRA NATH RAY SAHIB, Judge, Small Cause Court, Lucknow.**

(2) In my opinion the age of consent as regards strangers should be raised to 'sixteen.' It would be a check on immorality and would save many more girls from ruin than at present. My views as regards the age of consent between married people will appear further on.

(5) So far as my information goes, girls attain puberty among the upper classes, as distinguished from the labouring classes, generally at the age of 13 or 14. By the time they are in their 14th year almost all the girls attain puberty. Well developed girls, generally those who are well fed and lead a life of ease, attain puberty even earlier. I have no information about girls of the labouring classes.

(7) I do not attribute the practice of early consummation of marriage before or at puberty to religious injunction. I am not aware of any such religious injunction and even if there be any, it has become obsolete.

(8) "Gaona" ceremony is usually performed among up-country Hindus. Attainment of puberty or consummation of marriage does not seem to have any concern with it.

(9) I do not consider the attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage. In my opinion at least a year better perhaps 2 years after the attainment of puberty a girl becomes fit for consummation of marriage. This is, however, my personal opinion and that of a layman. Medical men are in a better position to speak on the point. My opinion is based on the fact that though a girl may attain puberty at 13 or 14, she does not

seem to have sufficient physical development to bring forth strong and healthy children until she is in her 15th or 16th year.

(10) Except in the case of an educated girl, I doubt if a girl can ever duly realize all the consequences of cohabitation. But, generally speaking, it may be said that she is in a position to give intelligent consent when she is in her 16th year.

(12) I do consider early consummation and early maternity responsible for high maternal and infantile mortality, and also for the intellectual and physical deterioration of the people of India. It is usually seen that, all other things being equal, a girl who conceives at an advanced age brings forth healthy and strong children while a girl who conceives at an early age brings forth weaker children. It is also not unusual to see the second or third child of a girl healthier and stronger than the first born. In my opinion tuberculosis which is so prevalent among the ladies of India is due to early maternity. A girl who gives birth to a child at 13 or 14 neither knows how to take care of herself nor of the child and the result is often disastrous. It is a common saying in Bengal that a woman at twenty is an old woman. It is not unusual to find a girl of 20 the mother of 3 or 4 children and who entirely lacks the strength and vigour of youth.

(14) Yes, they do, and simply from a desire to have grandchildren early.

(17) Yes, I would. In those cases in which no serious injury has been caused to the wife, though she was under age, I would punish the husband with fine only not exceeding Rs. 50. In other cases the existing law may be left undisturbed.

In this connection I wish to make certain remarks though they are not exactly in point. In my opinion the object in view would be better served by passing Mr. Sarda's Bill into law than by punishing the husband for early consummation of marriage. If girls under age are given in marriage it will not be possible, at least it will be very difficult to prevent the husband and the wife from coming together or even sleeping together. If under such circumstances the offence be committed it will be very difficult to detect it unless a serious injury is caused to the person of the wife, and in the latter case also every attempt would be made to screen the offender. It is also doubtful whether it would be fair to punish the husband if under such circumstances he is unable to exercise sufficient control over himself. To throw every temptation in the way of the husband and then to punish him for lack of self-control does not seem to be proper. The proposed section 376A of the Indian Penal Code does not make any difference in the case of a wife who may have attained puberty in her 13th year and may be physically well developed. Nor does the existing section 376 Indian Penal Code make any difference in the case of a wife who may have attained puberty in her 12th year and may be physically well developed. Such cases are by no means altogether rare, especially among well-to-do people. Great hardship and even failure of justice may be caused in individual cases if the law be uniformly applied in each and every case. In my opinion all these difficulties will disappear if marriageable age of girls be fixed by law. If a man is not to have sexual intercourse with his wife before a certain age there does not seem to be any sense in his marrying her at all before that age.

(18) The trial of offences within the marital state should invariably be held *in camera*.

(20) I have already given my answer to this question while answering question 17. In my opinion the upper classes would certainly welcome the latter alternative. Formerly the Bengalis, as a rule, gave their girls in marriage before the age of puberty, but within the last few years I have noticed a decided change. I think if people can take refuge in law as against public opinion for keeping their girls unmarried till an advanced age they would welcome it. The irreconcilables are fast disappearing and people now more readily take a reasonable view of things than they did before.

(21) It will be ages before any appreciable progress of social reform is noticed, especially among the lower classes, by means of education and social propaganda. If the marriageable age of girls cannot be fixed by law I would rely on the strengthening of the penal law to secure the object in view.

**Written Statement, dated the 13th August 1928, of Mr. M. ABDUL HAQ,  
1st Additional Judge, Small Cause Court, Lucknow.**

1. I have no personal knowledge of any dissatisfaction with the state of law as to the age of consent, as contained in sections 375 and 376 I. P. C. in the general public.

In intelligent circles the idea is entertained that in the last explanation to section 375, the age of thirteen years is too low. The words "thirteen" should be substituted by "sixteen."

2. (1) I am not in favour of retaining the age of consent as it is.

(2) I support the making of an advance from fourteen to sixteen years as given in the fifth proviso to section 375.

The circumstances justifying an advance are that a girl of fourteen has no intelligent appreciation of the consequences of consummation upon her system and constitution.

3. I do not think crimes of seduction or rape are frequent in my part of the country. Stray cases at times happen. No doubt for every case that comes to light there are many which remain undetected, but this will be an unsure data to build any opinion upon.

The raising of the age of consent is bound to have a deterrent effect in reducing the cases of rape and seduction, and those who get out of the clutches of law merely on the ground of the age of the victim, will not be allowed to do so, but it is not possible for me to give a definite opinion as to whether the raising of the age of consent has had a deterrent effect.

4. I doubt very seriously whether the raising of the age of consent to 13 years has had the effect of protecting married girls from cohabitation within the marital state.

In various communities, there exist many ceremonies which consist in inviting the bridegroom to his father-in-law's house. Presents are given, a feast follows, and then the bride and the bridegroom are sent to a parlour, which in a vast majority of cases results in consummation. I am of opinion that the raising of the age of consent to 13 has not resulted in postponing consummation, although it has stimulated public opinion in that direction, and has inclined public opinion to put off marriage.

5. I have no personal knowledge with respect to this point. Enquiry from medical practitioners and others shows that the usual age of puberty is between 13 and 14 years. Instances where puberty has been reached at 15 or 16 are by no means uncommon. It is safer to fix the age at 15 or 16, as first signs of puberty are by no means a sure guarantee of regular puberty.

I know of no difference between various caste, classes or communities.

6. I have no knowledge of this fact.

I know of no case which might have come to court.

7. I have no knowledge about this question. The custom of consummation before puberty does not obtain among Mohamadans.

8. There is no "Garbhadan" ceremony in my part of the country.

"Gaona" ceremony is performed among the Hindus, it is generally performed soon after puberty.

9. The first portion of this question I answer in an emphatic negative.

I would fix the age for consummation at 16 years.

10. I would fix the age at 16 years although I doubt that the uneducated girls have any intelligent appreciations of all the consequences even at that age.

11. I have no personal knowledge of any case. The doctors whom I have consulted give a narrowing detail of injuries sustained by immature girls.

Specialists in midwifery Dr. C. C. Bose of Cantonment Road, Lucknow, and his colleague Lady Doctor may be consulted. They will give necessary details of many cases which came to their knowledge.

12. Yes.

13. There has been a perceptible advance of public opinion in my part of the country in favour of an extension of the age of consent in marital cases. But I do not think it is due to the amendment of law in 1925. It appears to be confined to the upper strata of society.

14. Yes. They are eager, partly to have grand-children, and partly to perform ancient ceremonies which have been allowed by longstanding usage.

15. There has been considerable difficulty in determining the age of girls not only in connection with sections 375 and 376 but also with sections 363 Indian Penal Code. The first care of the accused in such cases is to obtain a medical certificate from some medical practitioner showing the age to be higher, and to put the case out of the range of the sections.

The standard of honesty in medical practitioners should be raised, and medical councils may be asked to give authority only to doctors whose integrity is beyond question.

16. Yes.

17. Yes, I would not interfere with the existing law in extra marital cases. But in marital cases, there are extenuating circumstances, and the punishment should in no case exceed more than a fine of Rs. 50. So heavy a punishment as is existing in the penal law at the present time, affects the future of the family and the girl in the long run. The husband after suffering the punishment will in most cases be inclined to desert the girl, or take another wife, which no law can prevent.

18. Offences within the marital state should be tried in camera. Husband is the only person who is guilty, and the victim should be protected as much as possible from future consequences.

19. The investigation into marital cases should be carried on by an officer not below the rank of the Deputy Superintendent of Police. It will shut the door for improper prosecution and extortion.

20. In my opinion legislation fixing the minimum age of marriage is by far more effective than penal legislation. It is very seldom that offences within the marital state ever see the light of day as far as upper strata of society is concerned.

21. I would prefer to rely upon the progress of social reforms by means of education and social propaganda, and attach little value to the strengthening of the penal law. The last alternative may also be resorted to as it is likely to emphasize on the public mind the necessity of the reform and will be acted upon in organised circles.

The questionnaire is based mainly upon the hygienic standpoint. There is another phase which must also be kept in view by the legislature. It is the social standpoint.

In Indian society marriage of girls is considered to be an imperative necessity. An old maid in an Indian household is a source of social opprobrium and disgrace for all the members. They desire to get rid of the responsibility, and place the girl under the protection of the husband and his family as soon as possible. This idea is in a large measure responsible for early marriages. In those cases where the father of the girl is dead the responsibility of bringing up, educating and marrying the girl lies on the widowed mother, who in most cases will be found to be impecunious, or other relations, if any. To ask them to perform this duty compulsorily up to the age of 16 will be a great hardship, and might produce disastrous results.

I would therefore suggest that in raising the marriageable age of girls an exception may be made in the case of orphan girls whose father is dead.

**Written Statement, dated the 13th August 1928, of Rai L. CHIRUNJI LAL SAHA, Sahib Bahadur, Jagirdar and Proprietor, Dewaldhar Estate, Almora.**

1. There is dissatisfaction as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

2. In my humble opinion—

(1) the retaining of law of age of consent may not be retained as it is ;

(2) there should be made an advance on the present law.

3. The crimes of seduction and rape happen very seldom in our district. Yes, to a certain extent, but the sensible and educated people have appreciated it. And the improper seduction of professional girls for immoral purposes is still current and is due for the sake of making money. Some time before there were restrictions for it, from the local authorities, but it is not in existence now. I beg to suggest that such check and restrictions may again be adopted by the Government which may be made into a law.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years is not effective in protecting married girls against cohabitation with husbands within the prescribed age limit, as the husband does whatever he pleases after his marriage with poor minor girl.

(1) Yes, by postponing the consummation of marriage.

(2) I see in our part of the country sensible and educated people are putting off the marriage above 13 years.

(3) In my humble opinion the age limit of girl should be 16 years and that of boy above 18 years.

5. The usual age at which girls attain puberty in our part of the country is above 13 years generally and it does not differ in different castes, communities or class of society.

6. Yes, the cohabitation is common in our part of the country among any class or classes of people :—

(1) in some cases before puberty ;

(2) generally some after puberty ;

(3) in some cases before the girl completes 13 years ; such cases do not come to courts and are very rare.

7. I do not at all attribute the practice of early consummation of marriage before or at puberty. I do not think that it is to religious injunction ; as far as I know it appears to me a social custom. I do not know if there is any authority and what penalty for its breach is.

8. Yes, " Gaona " ceremony is performed in our part of the country among higher caste Hindus. There is no particularity about it. It is generally performed soon after marriage. But very seldom after the puberty.

9. Yes, I do consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage after the age of 16 years.

10. Above the age of 16 years.

11. I have seen several cases of professional or otherwise cohabitation before puberty or after puberty before full physical development of the girl which resulted in injury to her health or body or prejudicially affected her progeny and also early death. These are too numerous to give details.

12. Yes, I do consider early consummation and early maternity are responsible for high maternal and infantile mortality.

13. Yes, in our part of the country among the sensible and educated people public opinion is developing, but it is not general and is confined at present to above-mentioned persons.

14. Yes, the womenfolks in our part of the country are not well-educated and therefore favour early consummation of marriage for their children.



15. In main part of the country a horoscope is invariably prepared for all girls and is a sufficient proof of the age ; a medical certificate in addition will further elucidate the question of age. The difficulty in determining the age is not realised by law.

16. Yes, I think so, if the Age of Consent is raised to 14 years or above.

17. Yes, extra-marital offence should be punished more severely than marital offence, which should be rather dealt with leniently.

18. There should be no difference. But if any accused within marital offence desires to be tried *in camera* he should be given that option as of right.

19. The Criminal Procedure can deal with such cases and no amendment is at present necessary.

20. I think that the penal legislation fixing a higher age of consent for marital cases is likely to be more effective than legislation.

21. Yes, I do prefer to rely on the strengthening of penal law to secure the object in view.

**Written Statement, dated the 13th August 1928, of Mr. RAMCHANDRA MEHROTRA, Secretary, Arya Samaj, Farrukhabad.**

1. Yes, there is dissatisfaction. The Age of Consent should be raised.

2. (1) & (2) The law as it is should not be retained because fourteenth year is the age when the puberty generally develops and the girl is not apt to distinguish between right and wrong easily. Therefore Age of Consent should be increased from 14 to 16.

3. Crimes of seduction or rape are not frequent but they are not also unknown. The raising of the age of consent to 14 years has succeeded to some extent in reducing the cases of rape.

4. (1) The amendment of 1925 raising the age of consent within the marital state has been successful in postponing the consummation of marriages.

(2) Public has very little realised the gravity of amendment.

(3) The marriages have not been put off beyond 13 years but no doubt the idea of early marriage is at stake.

In our opinion the law should be promulgated in every nook and corner of the country and exemplary punishment should be accorded to the offenders.

5. The usual age of puberty is between 12 and 14 years in the United Provinces. Yet it differs. Persons belonging to low castes and subject to manual labour are generally observed to get their genitals developed better and earlier than the persons who enjoy easy-going life. The question of puberty has also got a significance over the mental thinking and the surrounding atmosphere. As for instance in the society of licentious persons, a person who moves in it is generally found to attain puberty at an earlier stage.

6. (1) In this part of country cohabitation before puberty is almost unknown.

(2) Among the corrupt classes such as prostitutes it is very common soon after puberty.

(3) The answer of (2) covers this.

7. There are religious injunctions as to the early consummation of marriage before or at puberty amongst the Sanatani Hindus. The authorities quoted on the subject are Shigrah, Bodh and Mahurta Chintamani. But if we begin to follow the circumstances under which the above-named authorities were framed and caused to be practised we come to understand that they were simply a safeguard against the outrages of the then rulers and with the view to make the provisions of the authorities more practicable they were moulded into religious injunctions. Thus we can safely say that they were particularly not the religious injunctions but simply preventive measures. The religious penalties for its breach are as prescribed by the above said authorities.

8. Gaona or Garbhadan ceremonies are usually performed in this part of the country mostly, it coincides with the consummation of marriage and nearly 5 per cent. is anterior to it. Now-a-days it is almost performed after puberty and it is always performed within 3 years from the first menses.

9. Ordinarily it is so considered but according to Manu, after 3 years from the first menses the physical development of a girl becomes complete for her own health and progeny.

10. Not before sixteen.

12. Yes, the early consummation and early maternity are solely responsible for the high maternal and infantile mortality and vitally affect the intellectual and physical progress of the people as the most ordinary illustration given below will show. If we sow an undeveloped seed into an unfit soil, we are sure to reap nothing, and if at all fortunately we get anything we are sure to get a very weak and unwholesome production.

13. There has been a further development of public opinion in favour of an extension of the age of consent in extra-marital cases. The opinion is general of course in the class of the people who have been in the know of the amendment of 1925.

14. The illiterate and uneducated women are found slumbering under the old notions.

15. No special feature except the medical examination appears to be expedient.

16. If the age of consent is raised to 14 years or above the difficulty in determining the age of consent will be minimised as at this period we hope to find the developed muscles and organs of the female facilitating the medical examination.

17. Yes. We would like to separate extra-marital from marital offences. For the extra-marital offences the punishment should be transportation for life and for marital not more than 2 years' simple imprisonment.

18. The trial of the offences under extra-marital state should be in Sessions Court and those of marital state in Magistrate's Court.

19. Under this head the person so aiding should be tried along with the principal offender like the same.

20. Minimum age of marriage will be more in consonance with public opinion.

21. Social reforms by means of education and social propaganda will be more strengthening and stable coupled with penal law.

**Written Statement, dated the 9th August 1928, of Mr. G. C. BADHWAR,  
I.C.S., District Judge, Farrukhabad.**

1. There is no general dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376, I. P. C., except in the sense that enlightened public opinion demands the raising of the age of consent and the inarticulate masses are incapable of thinking for themselves and knowing what is best for them.

2. I am in favour of making an advance on the present law on moral and medical grounds and in the interests of the country and civilisation.

The question of the Age of Consent has a direct bearing on Mr. Sarda's Bill to regulate marriages of children amongst Hindus and the latter will not be effective in my opinion without the Age of Consent being raised under the Penal Code.

It is not necessary to repeat here the reasons contained in the statement of Objects and Reasons appended to Sir Hari Singh Gour's Bill to amend sections 375 and 376, I. P. C.

The Census returns show more deaths among women between the ages of 10 and 15 than among males of the same ages, and one of the main causes of the disproportion-

tion between the sexes is stated to be the custom of early marriage. The circumstances justifying the advance on the present law have been publicly discussed *ad nauseam* and it would be sufficient to say that the law in this respect in India should not lag far behind that in force in other civilised countries. The last amendment of the law of the Age of Consent has caused no hardship and has prepared the people for the proposed advance which will surely result in their material benefit.

3. The crimes of rape and seduction are fairly frequent in this part of the country. In the last three years there were 14 cases of rape as against 10 in the preceding three years, 1922-24. The corresponding figures of cases under sections 363 and 366, I. P. C., are 15 and 13 respectively. The amendment of the law made in 1925 has not succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. The only remedy I can suggest is making the law more stringent and making it known to the masses by the usual means for publicity, i.e., by written and spoken word.

4. It is difficult to estimate the effect of the amendment of 1925 raising the Age of Consent within the marital state to 13 years, because the majority of cases of rape of child-wives by their husbands do not come to light at all, but I have no doubt that it has stimulated public opinion in that direction and that there has been some improvement in putting off marriage beyond 13 amongst the educated classes. Even a rule of the Education Department in the United Provinces, debaring married boys from admission to the High School Examination, has produced a wholesome effect.

The remedy is to enact a law conceived in the true interests of the people and to enforce it strictly. By publicity the masses should be acquainted with the provisions of the law.

5. In this part of the country girls are said to attain puberty between 13 and 14. It is said that girls of rural classes attain puberty a little later than those of urban classes.

Cohabitation before puberty is common among those classes who give away their daughters in marriage for a money consideration or where a guardian is tempted to give away a minor ward to a rich husband of a disproportionate age.

6. Ordinarily these cases do not come to court, but in April 1928 I tried a Brahmin aged 35 who had raped his child-wife aged 11. The record of that case (*K. E. vs. Kalka Prasad*, section 376, I. P. C., Sessions Trial No. 18 of 1928) is instructive. The Acting Chief Justice of the Allahabad High Court in disposing of the appeal remarked as follows :—

“This appeal exposes in a marked degree the evil effect of the pernicious custom of early marriages, which unfortunately prevails among the lower classes in this country.”

It was proved in this case that sexual intercourse with the immature girl brought on fever, rendered her unconscious and she might have died of the profuse bleeding she was suffering from, if a local doctor had not stopped it in time by giving her injections.

7. I do not attribute the practice of the early consummation of marriage before or at puberty to religious injunction, nor am I aware of any such injunction.

8. “Gaona” ceremony is now dispensed with in many cases. When performed it is practically coincident with the consummation of marriage.

It is performed within a year or two of the attainment of puberty. “Garbhadhan” ceremony is performed when the girl becomes pregnant.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage.

The answer to the second part of the question had better be left to a medical expert, but a layman would say the later the better.

10. Not less than 16 years.

11. In answer to question No. 6 I have already quoted *K. E. vs. Kalka Prasad*, section 376, I. P. C., Sessions Trial No. 18 of 1928, and given the necessary details.

For further elucidation the record of the case can be called for.

12. The answer is decidedly "yes." *Vide* Census of India, 1921, United Provinces of Agra and Oudh, Vol. XVI, Part I, Report, pp. 86-87.

13. The development of public opinion in favour of an extension of the Age of Consent is confined to the educated classes. As regards the ignorant masses, it may be argued that the first dose of medicine has not disagreed with the patient and the second is sure to do good.

14. No.

15. Medical evidence on the question of age is not conclusive and it was discounted by the High Court in *K. E. vs. Kalka Prasad* cited above. I would suggest insistence on the production of a birth certificate and would cast the burden of proof of a child-wife's age on the guilty husband in marital cases of rape.

16. No.

17. Yes. With regard to penalties there is no particular reason for differing from the proposal of Sir Hari Singh Gour.

18. No amendment of the existing provisions of the law as given in the Criminal Procedure Code is called for.

19. None.

20. I have no doubt that penal legislation would be more effective than legislation fixing the minimum age of marriage. In my opinion both remedies are called for and would be acceptable to public opinion, so far as it is ascertainable, in this part of the country.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view, the difficulties in the progress of social reform by means of education and social propaganda being so great that reliance upon it would be tantamount to a postponement to the Greek Calends.

### **Written Statement, dated 9th August 1928, of Mr. H. HUSSAIN, Honorary Secretary, Bar Association, Cawnpore.**

1. There is dissatisfaction with the state of the law as to the Age of Consent contained in sections 375 and 376 of the Indian Penal Code among the educated classes who are more concerned with the future welfare of society.

2. The circumstances which in my opinion justify making an advance on the present law regarding age outside marital relations are that a girl of 14 is immature enough to realize the gravity of the position in which she lends herself, however willingly.

3. Crimes of seduction and rape are not very frequent but still they exist. The amendment of the law made by Act XXIX of 1925 has not had any perceptible difference.

4. It has succeeded in certain cases only to putting off the marriage beyond 13.

5. The usual age at which girls attain puberty in my part of the country is between 13 and 14. This is general, not specific.

6. Cohabitation is not common and except in cases where the girl has been subjected to the brutal passion of a man, these cases do not come to court.

7. This question does not arise in my part of the country.

8. Yes.

Coincides with the consummation of marriage.

The Gaona ceremony is performed generally and soon after as far as possible after the attainment of puberty.

9. No. Attainment of puberty is not sufficient indication of physical maturity. Much will depend upon the general build of the girl but a period of 1 to 2 years must elapse before consummation takes place.

10. This will again depend upon her build, for mental development is more or less dependent upon physical development, but I would put the age as 16 at which a girl may be considered to be intelligent enough to gauge the consequences of her consent to cohabitation.

11. I have come across several such cases during my experience at the Bar but I have kept no details.

12. I do consider early consummation and early maternity responsible for high maternal and infantile mortality. In Cawnpore where owing to congestion of population marriages take place early with consequently earlier consummation and maternity, the death rate of children is one of the highest in the Province.

13. Yes, there has been further development in favour of extension of the Age of Consent since the law of 1925 but this is confined more or less to educated classes.

14. No.

15. Yes. Difficulties have been experienced. I would suggest compulsory registration of births by enactment.

16. If the Age of Consent is increased to over 14, the margin of error in determining the age will be reduced.

17. Yes. I would separate extra-marital and marital offences into different offences. The punishment for both class of offences is sufficient in the existing law excepting that whipping should be made compulsory in extra-marital cases.

18. I do not think this is necessary.

19. None.

20. Legislation fixing the minimum age of marriage is generally considered to be more effective.

21. I prefer to rely on the strengthening of the penal law. The progress of social reform by means of education and social propaganda is a plant of doubtful and slow growth.

**Written Statement, dated the 13th August 1928, of B. GRISH PRASAD MATHUR, Officiating Subordinate Judge, Bareilly.**

The subject under discussion is not only socio-religious but also medico-legal, and, in order to arrive at a correct finding as regards the effect of the changes in law in 1925 and also of the proposals to further amend sections 375 and 376, it is not only necessary to go through the statistics of criminal cases since 1925 but also to judge the effect of the early consummation of marriages on the child-mortality in India. Besides this, no satisfactory opinion could be formed by looking to the statistics of India alone and without studying them with reference to those of the other countries, because no fair-minded man can ever be prepared to say that the high rate of child-mortality in India is the exclusive outcome of early consummation of marriages. The extreme poverty of the country, want of education amongst the masses and unsatisfactory sanitary conditions also go a great way towards increasing the death-roll of children. Consequently it is not easy to give a sound opinion on the questions without studying all the aforesaid aspects of the case. However, I have tried to suit myself to the time available, and am submitting my opinions for all they are worth.

**REPLIES TO QUESTIONNAIRE.**

1. Yes, there is dissatisfaction amongst men with more advanced views. The offence of rape is by itself very hideous and it becomes all the more hideous when

committed with girls of tender years. Therefore, if the Age of Consent is raised from 14 to 16 it would further minimise the chances of offences on under-developed girls and would also result in lesser injuries to their persons. Besides this, looking to her general education and natural physical growth, the consent of a girl below sixteen is no consent at all.

2. Please see answer to question No. 1. The answer justifies making an advance on the present law.

3. Cases of rape and seduction do occur but they are not very frequent. The amendment of 1925 has not been very effective. Such cases are not often brought to light, partly for fear of social odium and mostly because the police is not as sympathetic and fair-minded as it should be. I presume the Government will have to wait for some change in public opinion, which is already in the course of a great transition, and should make it a point to entrust the enquiry of such cases to especially empowered police officers whose morality and integrity are both above reproach and who could be safely confided in by the respectable members of the public. I may add that the amendment of 1925 has been too recent to result in any appreciable salutary effect on the society.

4. I am afraid the amendment of 1925 has neither been effective in postponing the consummation of marriages nor in putting off marriage beyond 13, but, howsoever much the more orthodox ones may decry it, so far as the stimulation of the public opinion goes, I think the amendment has gone a great way. But, in order that the public opinion may result in something practical, it seems to me absolutely necessary that a legal ban be put on all marriages below a certain number of years, say 16. At all events, it seems to be imperative that either the marriageable age and the Age of Consent in sections 375 and 376A should entirely correspond, or, better still, that the latter section be entirely made nugatory by substituting a legislation that no girl shall be married before she has attained the age of 16. The reason why I choose the latter alternative is that howsoever skilful a police officer may be, it is impossible for him to find out whether a husband has been committing an illicit married intercourse with his wife. Besides this, to entrust an outsider with any enquiry in this line would amount to a positive violation of the sanctity of any household. Therefore, the one piece of legislation which cuts at the root of all ills seems to be that no girl who is below 16 shall be given in marriage, or allowed to give a valid consent for a sexual intercourse.

5. The usual age of puberty is between 13 and 14. I do not think that this differs in different castes or communities so far as Indians are concerned.

6. (1) No.

(2) Generally, yes.

(3) In some very rare cases only and without the approval of the society.

I suppose some of such cases come to court, say one in a thousand.

7. I presume every religion has condemned the consummation of marriage before puberty.

There is no doubt that so far as the Hindus are concerned, the practice of the early consummation of marriage could be traced back to the Shastrie injunctions [see (1) *Hiranyakeshi Griha Sutra* 1 P. P. 6, Sutras 20, 21; (2) *Sacred Books of the East Series*, Vol. 30, pp. 192, 193, 200; (3) *Paraskara* 1 K., 4 K., 15; (4) *Rig Veda* 10 M., 85 S.], that there should be a consummation on the fourth night of the marriage after the performance of the Chaturthi-homa when the wife took her husband's Gotra. *Vrihaspati*, *Likhita*, *Harita* and *Manu* have repeated these injunctions and the *Madan Parijata* quotes a text of *Narada* and says that consummation is necessary to constitute marriage.

But all the aforesaid injunctions related to the period when (1) *Buddhi Sampanna*, a girl who has (sexual) intelligence or (2) *Nagnika* (see *Hiranyakeshi Griha Sutra* 1 P. 1 P. S. 19, Sutra 2), a mature girl, or a girl fit for cohabitation was married, or, according to *Rig Veda* 10 M. 27 Sutra 12 (*Swayam Sa Mitra wanute a nechit*), chose her husband from amongst the people.

According to the conditions as they are at present, the *homa* of the fourth night is now performed on the night of marriage or on the day after, and is also omitted by many. In a majority of cases, there is no consummation. The reason for the relaxation is not far to seek. When in some parts of the country even babies began to be married, consummation was out of the question and the *homa* was either cursorily performed or not performed at all. Therefore, the fact of the matter is that the injunctions have now no binding force. And, even when they were made in the ancient times they only stated that after the *homa* and consummation, the wife entered her husband's *gotra*. The only penalty that was thought of was that a virgin widow in whose case marriage had not been consummated might be re-married. The *homa* was of course very necessary, because, as said Madhava, without the performance of the *homa*, the legal status of wifehood could not arise. But now only the Saptapadi makes the marriage final. The *homa* or consummation is not necessary to make a marriage valid.

8. Gaona ceremony is usually performed in this part of the country. It generally coincides with and is also sometimes anterior to the consummation of marriage. It may be performed either before or after puberty. There is no time limit fixed for it, but, generally, the parents of the girl do not wish to take the risk of keeping the girl in their house after she has already attained puberty.

9. In some cases it is, and in many other cases it is not. Generally speaking, two or three years must elapse between puberty and consummation.

10. Of course, much depends on the health and education of the girl, but, generally speaking, an Indian girl is intelligent enough to give her consent to cohabitation with a due realization of consequences at the age of 16.

11. I have no personal information as regards this question, although Miss Mayo's book may have much to say on this matter.

12. Yes, to a great extent.

13. I do not know of any further development in public opinion.

14. Yes, the older fogies do, but the younger ones are strongly against early consummation.

15. It is really very difficult to determine the age of girls. The opinion of the so-called medical experts makes confusion worse confounded. Strenuous efforts to maintain correct and more detailed birth registers seem to be the only remedy possible.

16. Medical men will be able to answer this question better but probably it would be easier to determine the age with greater accuracy in case of a girl who has stepped beyond the age of 14.

17 & 18. For the reasons given in my answer to question 3, I should not like to think of any marital offences or of any outside agency enquiring into them. But, however, if marital offences are to remain, all proceedings in respect of them should be conducted *in camera* and before thoroughly experienced and especially empowered magistrates.

19. If magisterial enquiry from the very outset be substituted for police enquiry I believe much better results would follow.

20. Both the forms of legislation are bound to be resented for some time in the beginning, but legislation fixing the minimum age of marriage would be better received and would involve much lesser dangers to domestic peace. The more sensible people feel anxious that the law should protect them from the obnoxious custom of child marriages.

21. Social reform and social propaganda are necessary but very tardy processes. The need of the hour is that the law should now make it possible what the society has, through the past many generations, made it impossible.

**Written Statement, dated the 16th August 1928, of Rai Bahadur DHARMA  
NAND JOSHI, M.B.E., Retired Deputy Collector, Chinakhan, Almora.**

1. There is no dissatisfaction with the Law as to the Age of Consent in force at present.

2. (1) The change had been received without opposition.

(2) The people themselves have begun to realise the baneful effects of early marriage in the case of both, males and females, and are veering round to the custom of giving the girls in marriage, as late as possible; and a further advance of the age limit to 14 years would be acceptable.

3. Were not very frequent before but they are becoming more frequent now. The Law as it stands is effective enough but the difficulty is in bringing the culprits under the grip of the Law. In these cases a plea of false marriage is often raised—a careful enquiry is very necessary to secure conviction.

4. A great change has come over the feelings of the people during the last 10 or 12 years and the people themselves have begun to see the evil effects of early marriage. The old idea that girls should be given in marriage at the age of 8 or 9 years is fast disappearing and the marriage of the girls is now taking place at the age of 13 or 14 years instead of 8 or 9. Care is taken that girls should be given away in marriage before they come to puberty, that is, before they menstruate. This period does not come generally before 16, so the girls are married now at the age of 14 or sometimes 15. This change has come from the general awakening and not altogether by the introduction of the Law.

5. This country being cold puberty comes late, not before 16, ordinarily; but in well-to-do families where girls get good nourishment it comes before that time. It depends on the physique of the girl and circumstances under which she is brought up. It is the same in all classes—subject to the physical condition.

6. Cohabitation is done sometimes at the age of 12 or 13 if the girl is physically developed before she attains puberty; but it is done immediately after she arrives at puberty as a ceremony is performed after menstruation called “Garbhadhan” in which cohabitation is enjoined by the Shastras. Cases of the infringement of the Law do not come to Court.

7. No. Religion does not allow cohabitation before puberty comes, it allows only after that period when a ceremony called “Garbhadhan” ceremony is performed. It is attributable to impatience of youth that cohabitation is done before the period of puberty.

8. Yes among all classes. But “Garbhadhan” ceremony is performed on the first appearance of puberty. This may take place after the Gaona.

9. As puberty generally takes place in this country after 16 years that, I think, may be taken as a fair indication of physical maturity. This depends much on the physical constitution of the girl.

10. After 16 or 17 years of age, if puberty is developed.

11. It certainly affects the health of a girl if cohabitation has taken place before she attains full puberty—if the girl is not of weak constitution the injury is not lasting.

12. Decidedly—yes.

13. As I have mentioned there is a great awakening in the minds of thinking people, against early marriage of both the girls and the boys. It has become an exception now rather than the rule that girls are married before 13 years of age. This awakening is almost general, but it is manifestly so among higher and enlightened classes. The change in age limit will not be felt as a grievance. Among the lower classes early marriages are still common as the marriages are made on money consideration irrespective of age.

14. Enlightened women are few as yet, but mothers are generally agreeable to their girls being married in riper years say 12 or 13.



15. The Age of Consent should be the completion of the 14 years. This can be determined if any case Comes to Court by a reference to horoscopes which are made for all girls.

16. Probably but not necessarily. The horoscope will easily settle the matter.

17. Cases of marital offences should be dealt with more leniently according to the circumstances. The limit of imprisonment should be one year. More often the offence could be punished by fine as it would not disturb the future relation of the husband and the wife but extra-marital offences should be rigorously dealt with.

18. Offences within the marital state should be tried in camera as far as possible. The other offences should be tried openly.

19. I think the existing safeguards are sufficient. The enquiry into marital cases should be conducted by an officer of the standing of an Inspector only.

20. I think fixing a higher age say 14 years for marital cases would be more effective and practical than fixing the minimum age of marriage. It will be preferable.

21. I would prefer the latter course. My opinion shortly is—

That a change in age limit in marital cases to 14 years is very desirable and would not be much opposed—as the people have themselves begun to see the baneful effects of early marriage and have begun to marry the girls at an advanced age of 13 or 14 years. Further reforms should be left to the growing good sense of the people.

**Written Statement, dated the 13th August 1928, of B. PIARE LAL SAHAB  
RASTOGI, Additional District and Sessions Judge, Kumaon.**

1. There is some dissatisfaction with the state of the law as to the Age of Consent, as contained in Sections 375 and 376, I. P. C., in enlightened communities, and I am sure they will welcome the change suggested in Sir Hari Singh Gour's Bill, and I venture to think that there will be no opposition on behalf of the enlightened communities.

2. My reasons for making an advance on the present law are :—

(a) Early age favours early consummation by adult husbands of marriages with girls who have not attained the age of puberty, and is thus productive of grievous suffering and permanent injury to child wives and of physical deterioration in the community.

(b) The crimes of seduction and rape are unfortunately becoming more common. The raising of the age limit will in my opinion tend to improve general morality and reduce the number of immoral offences.

3. The amendment of the law made in 1925 raising the Age of Consent to 14 years has not in my opinion succeeded to any appreciable extent in preventing or reducing cases of rape or the improper seduction of girls for immoral purposes.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years must have been effective to some extent in protecting married girls against cohabitation with husbands within the prescribed age limit in all the three ways mentioned in the question, namely :—

(a) by postponing the consummation of marriage.

(b) by stimulating public opinion in that direction.

(c) by putting off marriage beyond 13.

5. The usual age at which girls attain puberty is 16, but in some communities such as Jat, Gujar, etc., they attain puberty sometimes before 16, say at 14 or 15.

6. Early marriage favours early cohabitation, and cohabitation is common before puberty, and even before the girl completes 13 years, when the husband is adult and has an opportunity of having access to the wife. For evident reasons no such cases come to Court.

7. No. I have heard and I know of no religious injunction justifying early consummation of marriage. If there is any such injunction (laid down probably in Mohammadan period) it should not be obeyed, and it is not suitable for the present age.

8. The Garbhadhan ceremony is not performed. Gaona is generally performed in some cases, one year and in some cases three years after the marriage. Gaona ceremony is being abolished in advanced communities, e.g. (Arya Samajists). In my opinion it should be done away with.

9. I would fix the minimum age for consummation to be 16. As a rule a girl arrives at puberty or attains full physical development at 16 and not before, and cohabitation before that is likely to result in injury to her health and body and to prejudicially affect the progeny.

10. A girl in India cannot be said to be competent to give intelligent consent to cohabitation with a due realization of consequences before 16.

11. There have been several such cases in which cohabitation before puberty or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality, and they do vitally affect the intellectual and physical progress of the people.

13. Very little. It is confined to thinking communities.

14. No.

15. Yes. The raising of the age limit to 14 with marital state and 16 without marital state will minimise the difficulty.

16. Yes.

17. Yes. Transportation in extra-marital offences. Ten years in marital offences when the wife is below 13 years. Two years in marital offences when the wife is above 13 but below 14.

18. Trials of offences within the marital state should be held in camera and by Sessions Court. Inquiries should be made by Magistrates instead of by Police. There will be very few trials of this nature.

19. I am unable to suggest any safeguards beyond those already marking against collusion to protect the offender against improper prosecution or extortion.

20. Legislation fixing a higher age of consent for marital cases and Legislation fixing the minimum age of marriage will be both effective.

21. On both, i.e., (1) the strengthening of the penal law and (2) or the progress of social reform.

### **Written Statement, dated the 15th August 1928, of THE TOWN MAGISTRATE, Hamirpur.**

1. No, not at least among the largest section of the people.

2. (a) No demand by the people in general.

(b) No state of unrest is felt among the people on this account, hence there is no agitation by them.

(c) The agitation is confined to a few selected lovers of western civilization.

(d) No actual harm is noticeable in the condition of the society or state of health of the mother and child.

3. No, crimes of seduction and rape are not very frequent in this part of the country.

4. I think the raising of age will tend to increase the number of such cases. The number of girls of the age up to 13 will be comparatively lesser than the number of girls up to 14 years of age; as the latter will include number of girls who are up to 13 years and less, and also the number of girls above 13 and below 14 years.

By including this extra number of girls the field for committing this offence is enlarged and there will be more likelihood of increasing the number of such offences. It will give greater latitude to the law to get hold of delinquents. The criminal minded person will have larger number of girls to make his selection from. It will not have the effect of preventing or reducing the number of rape cases thus—

5—7. This is highly controversial. The girls in India at least in the higher and well-to-do circles attain puberty generally between 12 and 13, and even earlier.

8. The raising of the Age of Consent to 13 will mean postponement of consummation even after the puberty is attained, i.e., it will mean depriving the husband from his legal right.

It will over-ride the religious tenet enjoining that a husband becomes sinful when he does not grant gift of semen to his wife after the period of menstruation. He will be guilty of lessening the progeny of mankind.

The appearance of menstruation is the indication of girls fitness for consummation. Nature has declared her that she could be used for creating the progeny of mankind. Nature's rules and principles are infallible. It is to be presumed, therefore, that if the conditions are normal and normal development of the girl proceeds, in the usual manner, the girl is fit in every way for consummation and for bearing progeny. It is quite a different thing if a girl by reason of ill health or some other unusual circumstance is not found fit at puberty in every way for child bearing or producing a healthy child; that will be an exception to the rule brought about by unnatural circumstances. If more girls are found unfit, feeble and sickly owing to illness or ill-health for bringing forth healthy child, the fault is not of consummation at puberty, but it is due to want of proper nourishment. For the removal of this evil increasing or raising of consent age is not the proper remedy, say for argument sake that if the girls after attaining puberty remain unfit, feeble and weak for child bearing for two or three years more, will it be pleaded that the Age of Consent be again raised to 15 or 16 years? Certainly not.

Functions of public Health Department should not be interchanged with the functions of the legislature.

The extraordinary percentage of child mortality cannot, by the stretch of reason, be said to be due to infant marriage or the so-called early consummation; when Nature has granted certificate of puberty and fitness for consummation, it cannot be called early consummation. The proper age for consummation is the time of appearance of the menses whether it takes place at 12, 13, 14, or at a later age.

In the later strata of society and in the poor classes, the appearance of menses is delayed in most cases. It is due to want of proper development which in most cases is due to proper nourishment and poverty of the country. If in India early marriage is enjoined, there are graver reasons for it.

If it be assumed as I have shown above that appearance of menses is the indication of fitness for consummation and if it be considered that normally developed girl will have her menses only at the time when she is found by nature in every way fit, then it is most natural that consummation should take place and the duty of producing children and increasing progeny of human-kind should be attended to very seriously at the appearance of menses—failure of this duty is therefore regarded as sinful. If early marriage does not take place or would not have been enjoined the possibility of finding a husband at the proper time would have been removed; for a proper and suitable husband could not be had at the nick of the moment.

To prevent abuses of early marriage and safeguard the interest of the marital pair, second marriage is introduced. Without the performance of the second marriage which takes place either in the 1st or 3rd year of the marriage according to the condition of the girl, the girl is not allowed to go to her husband's house. A father would not allow a second marriage of a very minor girl, or even if it takes place, the mother-in-law there would not allow her sleeping at night with her husband, till puberty is attained. These are very healthy restrictions; and the state of living of members in a Hindu family which curtails most of the freedom of a marital pair, is another insurance.

The raising of consent age is absolutely uncalled for and not warranted by the state of society in India.

If it is meant to do so, it should be penalised that no husband is to consummate the marriage before the commencement of menstruation or say till a fixed period after menstruation.

6. No, (2) Yes, (3) not confined to any particular year of age.

7. It is enjoined in the Puranas that if a man does not give the gift of semen to his wife when she becomes purified after menstruating period, he will be deemed sinful.

8 and 9. Already answered.

10. At the age of 13 or later when menstruation begins, for without menstruation she does not feel truly the passion for cohabitation.

11—12. Included in No. 5. Strictly speaking there can be no early maternity. The law of nature is so rigid that no conception can take place before menses. If the state of health makes this premature, it is sickness or the disease responsible for this and not the age. A girl at the age of even 20 may not be fit to bear the strain of pregnancy of producing a healthy child. The function of Public Health Department should not be usurped by the legislature. The remedy lies in improving the public health and not penalising a legal right.

13. No.

14. There is the same feeling among them as is among men, generally neither men nor do women favour consummation before puberty.

15. No, not in my knowledge.

16. I do not think so.

17. They should be made the subject of a special law, and punishment deterrent.

18. It should be bailable and compoundable with the permission of the Court.

19. There is difficulty on account of which I hesitate to say anything so hurriedly.

20. The latter will be consonant with the public opinion.

21. The latter; when any social reform of any consequence affecting widely members of the public is extended it is always better and fruitful to effect it by means of education and social propaganda.

### **Written Statement of Munshi ABDUL HAQ KHAN, B.A., Deputy Collector, Kheri.**

1. To my knowledge no dissatisfaction has been publicly expressed against the state of law as contained in Sections 375 and 376, I. P. C. But people when questioned individually have a tendency to disapprove of the present state of law as to the Age of Consent.

2. It is a matter of knowledge that early marriages not only stand in the way of female education but go to undermine the health of the girls. The appealing ignorance among the women folk is mostly due to their being taken away from

their studies in order to be brought under wedlock. This not only retards the mental outlook but sometimes completely saps the very physical growth. Girls of about fourteen years of age barring cases of precocity, are generally unable to give an intelligent consent to sexual intercourse having regards to its effect on their progenies' health.

3. (a) Such aims are not frequent in my part of the country. I have taken the statistics of 3 years which are as follows :—

Year.	No. of cases.	Result.
1925 . . . . .	7	Out of 7 cases, 4 were convicted.
1926 . . . . .	4	Out of 4 cases, 3 were convicted.
1927 . . . . .	3	All these 3 cases were convicted.

(b) In my opinion it has a salutary effect in reducing cases of rape.

4. The statutory provision of putting a ban on consummation of marriage before the prescribed age limit has, it is feared, not the desired effect but it has stimulated public opinion in favour of raising the marriageable age. The only way to my mind is to make the consummation effective before 13 years to penalise all marriages within that age. In this province the education department has taken a right step in refusing admission to married students in the High School Examinations with the necessary consequences that marriages would not be contracted before 16.

5. Between 13 and 14 years. Yes, it does differ. In the lower classes as well as in the higher classes the girls attain puberty earlier than girls of the middle class as in the former the girls are healthier owing to their frequently taking exercise and in the latter by taking nourishing food, etc.

6. (1) No.

(2) Yes, if the girl is married.

(3) Yes, if the girl is married and has attained puberty.

Not very frequently.

7. No. I am not aware if any such religious injunction amongst the Hindus but there is none among the Mohamedans.

8. Yes. *Gaona* ceremony is very common among the Hindus. So far as I know it concludes with the consummation of marriage. The *Gaona* ceremony is performed within odd years of the marriage whether puberty is attained or not attained. No such ceremony obtains amongst Mahomedans.

9. No. Four years after attaining puberty.

10. 16 years.

11. I have no definite recollection of such cases.

12. As a layman I consider early consummation and early maternity is responsible to a large extent for maternal and infantile mortality. Early maternity generally mars the intellectual and physical development of the people.

13. Except among the orthodox section of the Hindus and the ignorant classes there has been an indication of the approval of the state of law as amended in 1925.

14. Yes, they do among the orthodox section of the Hindus and lower classes.

15. Yes, it is only the medical evidence which is relied on in such cases coupled with the oral testimony of their parents or relations which is generally vague. The only way by which correct age to be ascertained is that regular entry of the

date of birth and other particulars of identification, etc., be arranged to be kept, by the patwari in the rural area. The District Board agency can also be utilized in this respect.

16. The raising of age from 14 would not in my opinion maternally minimise the difficulties of ascertaining the age.

17. Yes, I would. I consider extra-marital offences more heinous than marital ones. The provision for punishment as laid down in Section 376 is deterrent enough.

18. Trial in marital offences must be held in cameras.

19. In the present state of society no proper safeguard are conceivable which may effectively check cases of collusion and improper prosecutions. Such practice can only be checked by stimulating and developing public opinion.

20. Penal legislation would be more effective but legislation fixing the minimum age of marriage would be more in consonance with the public opinion in this part of the country. Penal legislation though effective may get into odour with the public.

21. Although the strengthening of penal law on the subjects would be effective in immediately securing the object in view still I would prefer to rely on the social reform for the achievement of the end as it would not lead to any unhealthy education.

**Written Statement, dated the 11th August 1928, of Mr. DWARKA PRASAD, Secretary, Arya Samaj, Etawah.**

(1) No, because people do not know their rights and they do not know even the existing law.

(2) The age must be raised to 14 and 18 as people below it do not understand what they do and how they act.

(3) Crimes of seduction or rape are not frequent in Etawah district.

(4) This thing has not been observed and nobody ever cared about it.

The marriage of girl below 14 and boy below 18 should be penalised. This will be the only effective step.

(5) In this district girls usually attain puberty at 14. Those living beyond the Jumna attain puberty above 14, i.e., 15 and 16.

(6) This fact has not been observed and no cases came to Court.

(7) There is no such practice nor any religious injunction in this district.

(8) *Gaona* ceremony is always performed in this district. It coincides with the consummation of marriage. It is generally performed before puberty.

(9) No, because they generally remain weak and are unfit. At least 3 years after attaining puberty she may be fit.

(10) At the age of seventeen.

(11) I know of a case, in which the progeny remained defective and died at the age of about 26, who remained ill nearly all his life after birth being the result of early consummation probably below 12 years of age.

(12) Most decidedly early consummation and early maternity are responsible for high maternal and infantile mortality.

(13) There has been further development of public opinion in certain classes only in favour of an extension of the age of consent.

(14) Women in this district do not favour early consummation for their children.

(15) This difficulty has not been experienced here.

(16) Yes, it will be materially reduced if the Age of Consent is raised to 17 years.

(17) Yes, they should be separated. The maximum punishment in the case of marital offence should be three years while in the case of extra-marital offence it should be transportation.

(18) The case of marital offence should not be launched without the consent of the District Magistrate while in the case of extra-marital offence it may be launched as now by the police.

(19) I cannot make any suggestion.

(20) Legislation fixing the minimum age of marriage will be more effective. This would be in consonance with advanced public opinion in this district.

(21) I prefer to rely on the strengthening of the penal law to secure the object in view as social reform by means of education and social propaganda is very slow and people would suffer much intellectual and physical loss before any such social propaganda can be effective.

**Written Statement, dated the 10th August 1928, of Mr. JAWAHAR NATH SAPRU, Secretary, Arya Samaj, Fyzabad.**

1. Yes. The Ages of Consent as provided under Sections 375 and 376, I. P. C., are low, and we are dissatisfied with them.

2. The justifications for making an advance on the present law are as follows :—  
Outside the marital state—

(i) The state of ignorance amongst the Indian women is much that a girl of fourteen is hardly competent to give an intelligent consent of cohabitation with a due realization of consequences.

(ii) Because the present state of law offers greater facilities to those who traffic in girls for immoral purposes to screen themselves by influencing the immature minds of girls to consent to immoral life.

(iii) If a girl is a willing party to immoral life then for the sake of entire society the more it is put off the better it will likely to be for all concerned.

3. The crimes of seduction are quite frequent. The amendment of law raising the Age of Consent to fourteen years has not been of any practical value.

Outside the marital state the only effective remedy is to raise the Age of Consent to 18 years or nearly.

Within the marital state nothing can help except the passing of Marriage Act making it penal to marry a girl below the age of 14.

4. The amendment of 1925 raising the Age of Consent to 13 years within marital state has no visible effect yet though it had been a sort of safeguard with less advanced people.

5. The usual age at which the girls attain puberty in our part of the country is fourteen years. It does not much differ with different castes, communities or classes of society.

6. (i) No.

(ii) Yes.

(iii) No.

Such cases are rare.

7. There is no such religious injunction as far as we are aware.

8. *Gachni* is usually performed. It generally coincides with the consummation of marriages, but in a few cases it is held anterior to consummation. Generally it is performed after the attainment of puberty and within an year or so.

9. On account of hot climate puberty is attained long before maturity and is not an indication to justify consummation of marriage.

At the age of 18 and four years after attaining puberty a girl can safely bear the strain of child bearing.

10. At the age of 18.

11. I have not come across any such case.

12. Early consummation and early maternity is responsible for high maternal and infantile mortality and is vitally affecting the intellectual and physical progress of the people.

13. The public opinion in favour of an extension of the Age of Consent is only confined to the educated classes. The masses are indifferent and would not look with disfavour if the Age of Consent is extended.

14. Yes. The women are in favour as they are very fond of children.

15. The difficulties have been experienced in determining the age of girls in connection with offences under Sections 375 and 376, I. P. C.

The better registration of birth will minimise the difficulty.

16. Yes, to a certain extent it might be minimised.

17. I would prefer to separate the offences—

The maximum punishment for sexual intercourse by a man with his own wife being under 13 years of age.

Transportation for life or imprisonment of either description for ten years and fine.

In any other case.

The same as above.

Sexual intercourse by husband with wife not under 13 and under 14 years.

Imprisonment of either description for two years or fine or both.

18. Sexual intercourse by husband with wife not under 13 and under 14 years should also be triable exclusive by the court of sessions.

No difference of procedure is necessary.

19. No further safeguards are necessary.

20. The penal legislation fixing a higher Age of Consent for marital cases must be supplemented by legislation fixing the minimum age of marriage to be really of any practical effect in the present state of the society.

### **Written Statement, dated the 10th August 1928, of Mr. M. SHAH MUNIR ALAM, Subordinate Judge, Gorakhpur.**

The Age of Consent may be raised to 16 years but unless people become more educated and their minds are more reformed, there is not much of a chance to reduce seduction and rape playing havoc among young folks, the more so when the *parda* is going to be hooted out.

The only remedy is either to revert to old religious ideas and it being now nearly impossible, our hope centres now in the propaganda works through lectures, brochures, pamphlets, etc. We can appeal to the Panchayats, wherever it exists to put their weight and pressure in discountenancing early marriages or premature sexual connections. It is nearly impossible to legislate that a girl below 16 should not be married, for people will cry from housetop not to pass such a law.

Then if the marriage is done when a girl is 9 or 8 years old, under some excuse a *Gaona* is also expedited, and who can vouchsafe after that event that the boy bride-groom will not touch his girl or baby bride.

Puberty is not the only criterion, it takes years before the girl is mature, indeed a criterion if any feasible will be to ask oneself coolly if the girl can with safety bear a child and the child will be born healthy.



Social reforms do not touch the rural area, they are confined to the urban population and even among the literate class.

Educated Hindus try to marry at a late stage, when the girl is 14 or 13.

But I would put the age of the girl at 18 before she is married, and the boy must be 24 before he is married.

The panchayat, the Hospital, the Tahsils, Municipal and District Boards, the School Boards and Seva Samati, etc., etc., which now exist should take up the idea and instil it among all classes in fairs and *melas*. In the meantime, let us also raise the consent age to 16 years.

2. 16 years.

3. Seduction and rape frequent. Panchayats to discourage early sexual connections.

4. No.

Panchayats to encourage it.

5. 14 years.

It does.

6. (1) No.

(2) Yes.

(3) Yes.

Not before me.

8. Yes. In lower castes marriage and *Gaona* go hand in hand.

9. 18 years.

10. Not in India when modesty is so supreme.

11. Resulted in pregnancy, early death, child and mother wreck. Deaths at the childbirth.

12. Yes.

13. No.

14. They generally marry when girl is 14.

15. No case.

16. 16 is proper age.

17. Sufficiently punished.

18. No.

19. Panchayats.

20. No.

21. Essential by school texts, reading materials and social propaganda.

**Written Statement, dated the 10th August 1928, of Mr. BANWARI LAL,  
Chairman, District Board, Gonda.**

1. There is a little dissatisfaction with the present law on the subject specially with clause 5. The age should be raised to 16 as proposed.

2. Girls in this province do not attain sufficient discretion and are of immature understanding before they are 16 years of age. They have no experience of this world. To protect them from inducement and seduction it is very essential to raise the Age of Consent to 16 when they are able to form their judgment.

3. Crimes of seduction are more frequent than those of rape. Such crimes were not too frequent but lately some persons have made it a profession to seduce girls and send them away to other provinces. I don't think that there has been any appreciable reduction in these crimes since the amendment. The only effective remedy to put a stop to these crimes is to raise the Age of Consent to 16 years.

4. Not in the least such cases are very uncommon. In my experience and knowledge there has not been a single case where the husband was prosecuted for cohabitation with his wife under 12 or 13 years of age.

The educated class is against early marriage. Even where such marriages are performed their consummation is postponed. With the exception of some low caste people such as kahars and ghosis girls are generally married at an age between 13 and 15. Reform may be done by educating public opinion against early marriages and not by legislation.

5. Girls in this province generally attain puberty at the age of 13. In low caste they take a year more. It also varies with the social status and environments girls in poorer classes attain puberty a little later than those in richer classes.

6. Cohabitation before puberty is not common in any class in spite of the unemployment of the young men of the country but it is done soon after puberty. Such cases do not generally come to court. Those that come are very rare and are cases of rape.

7. I am not aware of any religious injunctions ordaining early consummation of marriage in any religion or creed in this province.

8. *Gaona* and *Garibadhan* are two separate and distinct ceremonies. They are invariably performed among the Hindus of this province. *ama* is the ceremony when the wife after her marriage goes to her husband's residence for the first time. It takes place in the first third or later alternative years according to the age of the bride. *Garibadhan* ceremony is that when the husband and wife unite together for the first time after their marriage. This ceremony coincides with the consummation of marriage while the former (*Gaona*) is anterior to it and has nothing to do with it.

These ceremonies are performed after the attainment of puberty and where the girl had not done so at her marriage within a year or so after attaining it.

9. This depends upon the general physique and development of the girl. Usually a girl is not fully grown up when puberty begins. Hence puberty alone is not sufficient indication of physical maturity for consummation of marriage which should not be allowed until two years after puberty.

10. A girl in this province does not attain sufficient maturity of understanding before she is 15. It is only after that age she can give an intelligent consent and realize the consequences of cohabitation.

11. I have come to know only one instance which occurred a year ago. One Mariam d.o. Imam Ali Khan of village Bhatta, pargana Gonda was married to Dost Mohd. Khan of Mankapur (age 20 years) at the age of about 10 years. The girl died 3 years after from consumption due in my opinion to early sexual intercourse.

12. To a great extent early consummation is responsible. Our young men having nothing to do betake themselves to this pernicious habit of early cohabitation. This as well as poverty of the people hinders intellectual growth and development.

13. To my knowledge none.

14. Much difficulty is experienced in determining the age of the girl for want of any authenticated record or document. A register of births and deaths giving full and detailed particulars and kept by a responsible officer would be very helpful.

16. The matter would improve if the age be raised at least to 16 years.

17. The present law is quite good and workable. I am in favour of omitting Section 376-A. It is sure to bring more hardship with less advantageous results. It will give the police more power to harass persons in general and to interfere in domestic life.

18. No, except that the offence under section 376-A be made compoundable.

19. The present law is quite good and workable. Improvement can be made by training the public mind and police department to the high sense of duty and to discharge their duties harmoniously, conscientiously and honestly. .

20. A legislation fixing a minimum age of marriage will save persons from being involved in an unnecessary criminal prosecution.

21. In extra-marital cases the amendment of criminal law would be much effective while in marital cases improvement should be made by social reform.

**Written Statement, dated the 9th August 1928, of Mr. MOHD. HASAN,  
Chairman, District Board, Gonda.**

1. Not in my knowledge.

2. (1) I am not in favour of retaining the present age.

(2) I am in favour of 16 years. My reasons are :—

(1) The girls are generally not fit for sexual intercourse below 15.

(2) In cases in which they are fit, the sexual connection cannot but result in affecting the health of the girl.

(3) The greatest reason is that below 16, girls can easily be seduced to consent without fully understanding its effect. In such cases consent will really be mechanical not real.

3. Crimes are frequent in this part of the country. I don't think the raising of the age in 1925 has appreciably affected the number. I think the raising of the age to 16 would have its own effect in reducing the number, as in many cases the accused depend upon proving the age to be above 14 and so manage to seduce girls of immature age to consent. I will also propose that severe sentences should be inflicted in cases under these sections.

4. (1) Yes.

(2) Very slight.

(3) Very slightly. The economic conditions are favouring the marriage at a grown up age.

5. 14 years. It differs not in caste but with wealth and poverty. In well-to-do people the girls may attain puberty even at 13 and in poorer classes it may go up to 15.

6. (1) No.

(2) In poorer class.

(3) Very rarely.

Hardly any in my knowledge, except rape cases.

7. No. There is no religious injunction to this effect. The orthodox Hindus put forward certain authorities of doubtful value which lay down that marriage should be celebrated before menstruation. But even this does not lay down that there should be sexual intercourse before puberty.

8. *Gaona* and *Garbhadhan* are two different ceremonies. They are performed in this part of the country. *Gaona* means the time of the brides going to the house of the husband. There may or may not be any *Garbhadhan* ceremony in this connection. *Garbhadhan* means the actual consummation of marriage, which generally takes place when both husband and wife are fairly grown up, except in very rare cases where small girls of tender age are married to grown up men having no parents. Generally *Garbhadhan* ceremony is performed very soon after puberty.

9. No. Invariably it is not. Not before 16 years of age at least 2 or 3 years after attaining puberty according to the general development of the girl.

10. Not before 16.

11. Yes. I know of one case. My maid servant's daughter was married at about 13 years. Soon after she gave birth to a son. Both of them died within a year. The girl died of consumption.

12. Yes. The matter is one of ordinary common-sense. Child mothers can hardly take up the task of mothers.

13. Hardly any.

14. No.

15. Yes. The keeping of permanent and clear registers of births and deaths.

16. If it is raised to 16 years, it will minimize the difficulties, because the general development will then be a great help to knowing the age.

17. No. The sentences as already provided are enough, but there should be severe sentences passed by the courts.

18. No. The existing rule is quite good.

19. Cannot.

20. I am in favour of both legislations. But the legislation fixing the minimum age of marriage would naturally be more effective and more in consonance with public opinion.

21. I would prefer to rely on the penal law. Social reform and education will have their effect, but naturally they will progress very slowly. The reform is most urgent and must needs be met by legislation.

**Written Statement, dated the 9th August 1928, of Raja SYED AHMAD ALI KHAN ALAWEE, C.B.E., M.L.C., of Salempur.**

1. Yes, among educated classes, the lower orders being illiterate and indifferent about it.

2. It is necessary to make an advance on the present law to 16 or 17 years of age because in rural areas early marriages are very popular, which accounts for the large number of premature deaths and for heavy infant mortality.

3. The crimes of seduction and rape are not frequent in the United Provinces. The amendment of the law in 1925 has had some good effect, I think, but it is too early yet to know for certain whether it has succeeded in preventing or reducing cases of rape, etc.

4. I do not think that the amendment of 1925 has been appreciably effective in protecting married girls against cohabitation within the prescribed age limit. The reason for this state of affairs appears to be ignorance of the law, caste prejudice, and old custom. An effective remedy would be to penalize marriages of girls under 15 years of age and giving wide publicity to the amendment of the law in rural areas by means of posters and by public criers.

5. The usual age of puberty in these parts is 14, but it differs among different communities and classes. Among healthy girls of well-to-do families puberty, I believe, commences at about 13.

6. I think cohabitation is common in these parts, especially among the lower orders, after *gowna* (home-coming of the bride). In most cases, however, the girl is let alone if she is under 12 even after *gowna*. I believe mostly such cases come into court in which influential people are interested and want to implicate their enemies.

7. So far as Muslims are concerned early marriages among them are not due to religious injunction, but on account of the prevailing Indian custom. Among Hindus it might be due to religious injunction, and I do not know whether as a matter of practice any penalty is imposed for its breach. It should, however, be borne in mind that the root cause of early marriages in India is the extreme poverty of the vast majority of the population, especially of the rural population.

At 5 or 6 years of age the boy or girl begins to lend a hand in household work and is expected to carry food and water to his or her parents or relations working in the fields. The chief cause of early marriages in India, is, therefore, economic, due to the abject indigence of large masses of the people. Therefore, from their point of view the postponement of the birth of children which the present amendment of the law would effect would be in the nature of a calamity, because they would be deprived of the help of their children in household work for so many years.

8. The *gaona* ceremony is common among the Hindus and also among low-class Mohammadans. Usually *gaona* is anterior to the consummation of marriages. There is no fixed time for the *gaona* ceremony, it generally depends on the circumstances of the parties. I think *gaona* is generally "performed" before puberty. In many cases marriage and *gaona* go together, owing to the extreme poverty of the parties.

9. To the first part of this question my reply is, I do not consider so. To the second part my reply is, at 15 or 16 years of age.

10. At 15 years.

11. *Nil*.

12. Yes.

13. No further development except among the intelligentia.

14. Yes, owing to hoary traditions, antiquated custom, ignorance and poverty.

15. I think so. The only remedy that occurs to me is to enforce registration of births in rural areas and to keep correct records of all births and deaths.

16. I think so.

17. Yes. For marital offences the amount of maximum punishment may be up to 2 years and for extra marital, it should be at least double.

18. *Nil*.

19. *Nil*.

20. I think legislation fixing the minimum age of marriage would be more effective and this would be in consonance with public opinion in this part of the country.

21. I would rely on both.

**Written Statement, dated the 13th August 1928, of Khan Bahadur Maulvi  
RAFI-UDDIN AHMAD, Magistrate and Collector, Mainpuri,  
U. P.**

1. The whole question of age of consent is a social one and with the growth of education and public opinion it must settle itself. Unfortunately, in this country, this growth is confined to a limited number. Ignorance and the so-called religious prejudices hinder the progress, and taking these two factors into consideration the legislature has undertaken to reform what really lies in the province of the society of the people themselves. This accounts for the failure of any law enacted in such matters. With this short preliminary I proceed to answer the question sent by you.

1. As a matter of fact, there is no dissatisfaction expressed with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. In educated families they generally do not like to marry the girls before they are sixteen. Among the uneducated lower classes they do not take notice of the law and marry at a very early age. It is very seldom that cases of marital offences come to courts. There are two factors working in both class of cases. In educated families, one finds that the education is generally amongst the males only. Females, in fact, are seldom educated and if they receive an education it is only a preliminary one and confined to wealthy and literate classes.

Even in this class the girl is not treated on equal status with a boy socially or legally. Among the Hindus the boy alone inherits the property and not the girl. The time is yet to come when the females will claim equal status with the males and various laws of inheritance shall have to be changed. Among the Mohammadans, although the law provides that the females should inherit one half with the male, but the customary law has grown up probably with their long intercourse with Hindus, in this country, under which the male boy inherits the property to the exclusion of females, and there too the percentage of education among the girls as compared with the boys is very small and insignificant. These disabilities and the social custom prevailing preferring a boy to a girl makes the position of the girls inferior. Another factor in these days is that among the Hindus and also among the Mohammadans it is very difficult to get educated boys for their girls. There is a competition amongst the parents and as every one of them wants an educated boy, if they delay the marriages an opportunity is lost. A third element in bigger and wealthy families sometimes comes in, *viz.*, the property. If there is an heiress, a rush is made on her parents to secure the match and he generally prefers one to the other and won't wait. Similarly, if there is a single heir owning large property they will like to have him for their girl and will be quite willing to marry irrespective of age. Lastly, the religious dogma comes in, which enjoins marriage just after the commencement of menses or monthly-course amongst the Hindus. Law or no law, they will continue the marriages unless by social reformation it is considered improper and they will evade the law and will be left unchecked because nobody is willing to prosecute. The same is the case among the lower and uneducated classes. Each person, who has a girl, wants to remove the burden, as it were, from him by marrying the girl early. Keeping the girl for poor people upto the age of sixteen means a maintenance of one more person which they find difficult. In some lower classes, in India, a girl is sold off for money and this adds to the income of the person as well as to the reduction of expenses of his family. The raising of the Age of Consent under Sections 375 and 376, Indian Penal Code is certainly desirable; but, as I have pointed out above, it is almost impossible to make it effective.

2. (1) The retaining of the law of the Age of Consent, as it is, in my opinion, is sufficient, as far as the penal law is concerned, for reasons explained above.

(2) This is no use making an advance on the present law, as the law can never be made effective. In my answer to question No. 1, I have stated the difficulties and these are the reasons for my view against it.

3. No, the amendment of the law made in 1925 raising the Age of Consent to 14 years did not succeed, in my opinion, in preventing or reducing cases of rape outside the martial state or the improper seduction of girls for immoral purposes. It is very difficult to make the law effective, but if you want to make the law effective, then I would propose maintenance of registers of births of both males and females in a proper way by the municipalities and rural areas. The registration of marriages with the age should be made compulsory. Formation of society in groups of villages under social reformers who should be on the look-out that the laws are not infringed upon.

4. No, there is no agency for prosecution of such cases.

(1) In lower classes it is ignored.

(2) Public opinion has not been stimulated in that direction as yet.

(3) The marriages are not put off on account of the reasons given in answer No. 1.

The methods that I would propose are enumerated in answer No. 3 and by making the infringement of the law severely punishable.

5. The usual age at which girls attain puberty varies in various provinces and even in the districts of one province. In Bengal the age of puberty comes much before the age of 13. In United Provinces, in the districts bordering Bengal (*e.g.*, Gorakhpur, Ballia, etc.) the age of puberty comes in at 12 at the latest. Amongst the various communities it also differs. In higher castes and wealthy families,

where the females are well provided or where the health is good, the age of puberty comes earlier than in poor families. Among the Mohammadans and meat-eaters the boy and the girl both grow faster and attain puberty earlier than in the communities who are vegetarian and cannot obtain rich or sufficient food.

6. (1) No.

(2) Yes, specially amongst the lower classes and uneducated people.

(3) Yes, as in (2).

Such cases seldom come to court.

7. I attribute the practice of early consummation of marriage before or at puberty to economic and social conditions generally (*vide* reasons given in question No. 1). There is a religious injunction also amongst the Hindus that it is sin not to marry the girl when she has attained puberty. I do not think there is any punishment provided for it, but the man who keeps a young girl unmarried after puberty is looked down upon by his castefellows and he finds it difficult to marry her to a decent boy. The religious injunction for such marriages is contained in "Parashuri" and "Shigharabodh" books amongst the Hindus. There are no such religious injunctions amongst the Mohammadans.

8. *Guana* and *Garbhadan* ceremonies are common at or just after the attainment of puberty. It coincides with or is anterior to the consummation of marriage.

9. No, in my opinion, as a layman, a girl in India develops herself at the age of 15 generally.

10. It depends on the education of the girl. Few girls in India can be said competent to realise the consequences of the consummation of the marriage, who are uneducated.

11. I cannot give any answer to this question. It is for the medical man to cite such cases.

12. It is also for the medical man to reply this question.

13. No. Very seldom it is found amongst the educated classes, but the difficulties enumerated in question No. 1 come in their way also.

14. No. But they cannot help it.

15. Yes, it is very difficult to distinguish age between 13 and 14 in developed girls. I cannot suggest any remedies. Perhaps the medical man may do so.

16. If the age is raised to sixteen years, probably the error in determining age will be materially reduced or minimised.

17. Yes. For extra-marital and marital offences the punishment, as provided now, is sufficient.

18. The difference in procedure in marital cases should in my opinion be that the marital offences should be tried in camera and by experienced magistrates.

19. No. There are seldom any prosecutions and the safeguards provided now are sufficient.

20. No, there is no public opinion, but I think legislation fixing the higher Age of Consent may be more effective.

21. I prefer to rely on the progress of social reform by means of education and social propaganda to the strengthening of the penal law to secure the object in view.

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**Written Statement, dated the 8th August 1928, of SAIYID ASGHAR HUSAN SAHIB, District Judge, Gonda.**

(1) In my opinion the general Indian public of the masses has no opinion one way or the other on this question. In other words there is no dissatisfaction.

(2) I am in favour of clause (2) of this question, for the reasons given in the answer to question No. 10 below. Progress in the advance will be slow, almost

imperceptible, as shown in the answer to question (1) above, but the beginning should be made.

(3) Crimes of rape and seduction are not frequent in this part of the country, except that kidnapping and abduction for marrying the girl are to be frequently met with. I do not think the amendment of the law in 1925 has had any effect or that the people are conscious that the law has been made more stringent. The state of things, therefore, remains the same as it was before the amendment.

(4) My answer to all the three questions is 'no.' From the very nature of the things there are difficulties in their coming to light, which are enhanced in the case of higher classes by the prevalence of the *pariah* system. The thing which could be most easily detected is No. 3. But the easiness of detection is counteracted by the difficulty of finding out the ages. The only measure that I can think of for minimizing the difficulty, perhaps for reducing it to the minimum, is the introduction of a more organized and effective system of recording the births in public registers, such as is done, almost in name, so far, at the Police Stations.

(5) Between 12 to 14. I think the girls in well-to-do classes of society attain puberty earlier.

(6) 1 and 2 'No,' 3 not common but more frequent than 1 and 2, number 1 being very exceptional.

These cases do not frequently come to court.

(7) Not in the case of Muslims.

(8) Yes. Generally it coincides with the consummation and is performed soon after puberty.

(9) No, 16, though I would prefer the age not to be below 18.

(10) Illiterate ignorant girl of the masses, 18. In educated classes 16. The law, of course, will fix one age which in my opinion should be 18.

(11) I am unable to cite concrete instances. The inability is due to the marriages of minor girls among the higher classes of Muslims not being common and to the want of knowledge of the ages of the girls whose health after marriage and progeny have been found to be far below the average even in the same class of families. But I entertain a sort of instinctive belief that the questions must be answered in the affirmative.

(12) It is, of course, more a question for medical opinion, but I would say 'yes.'

(13) The matter is never talked of and I do not think people in general even in the educated higher classes take the trouble of forming an opinion.

(14) I do not think so, so far as consummation is concerned, though early marriages for their female children are generally desired.

(15) In my opinion the true age of the girl is *never* known. Among the masses there is no idea about the age with the least approach to accuracy. As medical science has not, so far, evolved any certain tests for determining the exact age without the difference of even three years, the difficulty remains. The measure which I can think of is given in my answer to question No. 4.

(16) Not of determining the age from the parents, but yes in determining the age from medical opinion, if it is raised to 16.

(17) & (18) The law as now existing is, in my opinion, quite good and sufficient.

(19) I am not aware of any safeguards existing at present. I would suggest that the law should raise a presumption against a woman having cohabited or run away with the man in a lawful manner, unless he lodges information of the same with the nearest Magistrate before the girl is taken away.

(20) There should hardly be any difference of opinion in that the fixing the minimum age of marriage would be more effective. Cases against the law of the Age of Consent in marital cases will very seldom, if ever, come to light, while it would hardly be possible to keep the factum of marriage a secret. The difficulty of finding out the true age would be common to both cases.

(21) Progress of social reform.



**Written Statement, dated the 14th August 1928, of Babu GOPENDRA BHUSHAN CHATTERJEE, Subordinate Judge, Fyzabad.**

1. So far as my information goes, there is not any appreciable dissatisfaction regarding the existing law.

2. In my opinion, the Age of Consent, where there is no marital relation between the parties, may be raised to sixteen, and regarding other cases please see my answer to question No. 20. I am in favour of raising the Age of Consent in the case of strangers, for I think it may serve as a partial check on immorality, and many offenders who now get out scot-free, will receive the punishment they deserve.

3. Cases of seduction are more frequent than cases of rape. In my opinion the amendment introduced in 1925 had not the desired effect of reducing cases of rape or of seduction for immoral purposes.

4. Among educated classes marriage is often put off beyond 13, but I believe it is more on account of economic causes than for the amendment in law. Legislation penalizing marriage of girls below 13 will have the desired effect.

5. I believe it is between 12 and 13. Girls of well-to-do families, leading an easy life, I believe, attain puberty earlier than girls of labouring classes.

6. I am unable to answer the first part, but I can say that no case of this kind came before me during the period of four years, since when I have been doing criminal work as an Assistant Sessions Judge.

7. Marriage before puberty is often celebrated on account of religious injunctions, but I am not aware of any such injunction for consummation of marriage before puberty. I am not able to cite any authority, for I have not read the *shastras* on the subject, but I believe Hindu *shastras* do prescribe consummation of marriage when the wife has attained puberty.

8. *Gama* is usually performed in these provinces (U. P.). I cannot say whether it coincides with or is anterior to the consummation of marriage, but I can say that it is seldom postponed to any appreciable period after attaining puberty. I believe *garbhadan* ceremony has become obsolete; at any rate, I have not heard it being performed in any family.

9. In cases of well-developed and very healthy girls, the attainment of puberty may be sufficient indication of physical maturity to justify consummation of marriage, but in majority of cases it is not so. I would say the proper age for consummation of marriage is one year after puberty in the majority of cases, before which I think the girl cannot be expected to bring forth healthy children.

10. I believe it is only an educated girl that can give an intelligent consent to cohabitation with due realisation of all its consequences, and I think an illiterate girl can hardly do so at any age; she can do so, only when she learns by experience that is to say, after she is the mother of 2 or 3 children. But generally speaking I might put the age at 16.

11. I would answer it in the negative.

12. I believe, to a great extent it is. A girl of 13 or 14 who has the ill-luck to be the mother of a child has to take care of the latter before she knows how to take care of herself. The necessary result is that both suffer in health. Besides affecting the health of the mother and the child, early consummation of marriage entails a heavy burden on the family, which the parents, in many cases, can ill-afford to bear. The consequence is that the children are ill-fed, poorly clad, and cannot be given proper education.

13. I think no, except among those literate people who are of liberal views and who do not belong to the orthodox type.

14. Yes, specially the old women (fortunately their number is disappearing) who long to see the face of their grandchildren.

15. Ordinarily rape is committed on immature girls below 10, and so generally speaking there is no great difficulty in ascertaining the age of the unfortunate girl although no stone is left unturned on the side of the culprit to exaggerate the age

of the girl. But in some cases, it must be admitted, the question of determining the age exactly is a difficult question. I cannot suggest any practical remedy to minimise the difficulty, except production of birth registers.

16. I believe no, for the question will even then be a question of months, which is hard to determine. If the age is fixed at 16, the other party will say the girl is 17, and the difficulty will remain practically the same as at present.

17. Yes, I would. In cases of extra-marital cases, the law should remain as at present. In cases of marital relations, the sentence should be fine or imprisonment, subject to a maximum of two years, according to the age of wife and the nature of the injury caused. If the injury is slight, the husband can be let off with a simple fine. The fine in no case should exceed 50.

18. The prevailing procedure is all right for extra-marital cases. Marital offences should be tried *in camera*, and only by first class magistrates.

19. I am unable to suggest any practical safeguard, although I fully realise there is every chance of abuse. Real culprits may escape punishment and may not be put before the court, and the danger of improper prosecution or extortion is equally great.

20. In my opinion, the object in view can be better served by fixing the minimum age of girls for marriage. If girls of tender years are given in marriage, it will be difficult to prevent their husbands from coming to them. If under these circumstances, the offence is committed, it will be difficult to detect it, unless the injury caused to the person of the girl is great; moreover many cases will not be brought to light simply because very few people would like the scandal being made a matter for the public. It seems inexpedient to punish the husband under such circumstances for not being able to exercise sufficient self-control. To throw every temptation in their way, and then to punish them if they fall a prey to it can not be justified in any way.

The proposed Section 376-A should have an exception in the case of those girls who being in their 13th year have attained puberty and are medically certified to be fit for consummation of marriage.

If the husband of a girl below 14 is refused the society of his wife, there is no sense in allowing such tender girls to be married at all. It may be mentioned here that such tender girls are of little use to her husband's family as well with respect to domestic work.

The educated people would certainly welcome more a legislation of the type of Mr. Sarda's bill than a bill of the kind under contemplation. And I believe in the near future the uneducated mass will also follow the lead. If a legislation of the former type is passed, no one can blame his neighbour or relation for putting off the marriage of his girl, but if a legislation of the latter type be passed, it will in many cases be not observed, and many cases of its violation will not see the light of the day.

21. It will take an age to find any appreciable progress in this direction by social reform and education, especially among the uneducated mass. If it is not possible to have any legislation of the type proposed by Mr. Sarda, I would like to have more stringent law incorporated in the Indian Penal Code.

**Written Statement, dated the 30th August 1928, of Rai Sahib, B. AWADH BEHARI LAL, B.A., LL.B. Govt. Pleader, & Chairman, Municipal Board, Bela (Partabgarh). Partabgarh (Cudh), E. I. Ry.**

With reference to your letter No. 42 A. C. C., dated July 26th, 1928, I have the honour to state that the Board passed the following resolution No. 79 in its meeting held on the 27th instant:—

“The Board cannot depute any person for examination by the Committee nor is it in a position to reply in detail the questions asked. But it is generally of opinion that the Age of Consent in marriage be raised to 14 years and outside marriage to 16 years.”

**Written Statement, dated 10th August 1928, of Babu KUNJ BEHARI SETH, Retired District and Sessions Judge, Risaldarbagh, Lucknow.**

1. I am not aware of any public dissatisfaction. But personally I would feel more satisfied if the Age of Consent as contained in Sections 375 and 376, Indian Penal Code, be raised. I think the moral effect of such raising will be very satisfactory and healthy. It is likely to raise automatically the marriageable age of girls which in its turn will encourage their education. They will thus move in an atmosphere which will clothe them with more physical, intellectual and moral strength to protect themselves.

2. Social reform is progressing in almost every department of society. The grounds stated in my answer to question No. 1 may also be taken to be the circumstances required by this question. Moreover I have not yet been able to imagine any harm that may be attributed to the raising of the age of consent to eighteen years in non-marital cases. Even in marital cases the harm that may be ascribed by the opponents will be more than counter-balanced by the benefits that will arise.

3. I do not possess any statistics to give an accurate answer to this question. But so far as I am aware these crimes are not so frequent in this part of the country.

4. In my judgment the raising of the Age of Consent has been effective in all the three ways mentioned in this question. I have heard men and women talk that the *Gaona* ceremony should not take place before the completion of the age of 13 years. Consummation of marriage generally takes place after the performance of this ceremony. I have also heard some of them say that marriage may be postponed till the girls completes her age of 13 years.

5. The normal age for puberty is 11, 12 and 13 years. I am not aware of any difference of ages for the attainment of puberty among different castes or classes. But I believe there is a territorial difference. What I mean is that girls of the eastern districts of U. P. attain puberty earlier than those of the western districts. The difference in the climate may probably account for it.

6. As far as I am aware cohabitation takes place soon after marriage provided that the marriage has taken place sometime after puberty. I should say that cohabitation is very rare before puberty though there are some exceptional cases.

So far as I can recollect no such cases ever came before me in my career as Judicial Officer.

7. My answer to the first sentence of this question is in the negative. If I remember rightly, according to the teachings of late Swami Daya Nand Sarasvati Shastric authorities (I have not yet consulted them) are that marriage of a girl should not take place till at least 3 years after she has begun to have the monthly course.

8. In my community *Gaona* ceremony normally takes place one, three or five years after the marriage. Its main object is to postpone the consummation of marriage. In some cases, where the married girl, while living in her parents' home, has attained sufficient puberty, a ceremony anterior to the *Gaona* is held in order to consummate the marriage. In these cases the *Gaona* (departure of the bride to her husband's house) ceremony takes place after the consummation of marriage. Generally the *Gaona* is performed some time after the attainment of puberty.

9. In my opinion the attainment of puberty is not a sufficient indication of maturity to justify consummation. In the case of a child, as soon as it has begun to cut its teeth, it is not wise and safe to allow it to live on solid food. Similarly in the case of a woman, it is not safe to allow the consummation of her marriage immediately on the attainment of her puberty.

As a layman—I am not a medical expert—my view is that full physical development of a girl does not take place until she attains at least the age of eighteen years. I would, therefore, fix the minimum age of a girl at eighteen years to justify the consummation of her marriage without any injury to her own health and that of her progeny.

10. A girl is competent to enter into a valid contract until she completes the age of eighteen years. To exercise an intelligent discretion in the matter of cohabitation, with due realization of its consequences, a lesser age than the one required for the validity of a civil contract will not be adequate. For, regard must be had to the circumstance that the excitement of sexual passion is likely to get the better of the common-sense required to realize the consequences of the cohabitation. I would, therefore, in answer to this question, fix the minimum age as eighteen years.

11. In answering this question, with the permission of the Hon'ble the Chairman and the other Hon'ble members of the Committee, I feel tempted to make an observation by way of digression. The consummation of marriage between a boy of 15 or 17 years and a girl of 13 or 14 years is quite different and distinguishable from that between an adult of the age between 21 and 35 and a girl of 13 or 14 years so far as violence to her genital organs and their perpetual derangement—organic or functional or both—are concerned. In the one case the cohabitation may be a mere playful thing while in the other it may be an act of torturing violence. I would, therefore, suggest that whatever minimum age be fixed by legislation a discrimination should be made between the criminality of consummation of marriage in a case in which the husband is below the age of 21 years and the case where the husband is over 21 years. I would also mention for the sake of similar discrimination and distinction the case of a man over 40 marrying a girl of the age of 13 or 14 years. Whatever may be the social and moral evils attendant on such a marriage, so long as any legal sanction does not discountenance it, in its consummation the fear of violence to the genital organs or their derangement is greatly minimised.

Coming directly to my answer to the question, I am aware of a case in which a girl before puberty had to submit to the consummation of her marriage with an adult of about 28 or 29 years. Apart from the painful experiences her womb was permanently diseased. There was another case in which the union between a young husband of about 22 and a girl wife of 13 made her constantly ailing from one disease of the womb or another. I can state other similar instances. I have reason to believe that lots of diseases among women are due to premature consummation of their marriages.

12. My answer to this question is subject to what I have stated in my answers to questions Nos. 9 to 11. Early maternity is, in my opinion, greatly responsible for high maternal and infantile mortality. Early consummation may not, in my judgment, be so harmful if there be no sharp disparity in the ages of the married couple and if there be no excessive indulgence.

13. My statement made in my answers to questions Nos. 1 and 2 will be relevant to this question as well. I cannot say one way or the other, about the development of public opinion since the amendment made in 1925. But my own view is what I have already stated.

14. My answer to this question is in the affirmative. Women among us are generally so fond of children that they would never seriously or anxiously think over the consequences even if they breed down to the margin of subsistence or rather beyond it. This I fear is the chief reason why they favour early consummation. They look with anxiety if conception is delayed some years after the consummation of marriage. Another reason favouring early consummation is the fear that their children may not slip in life.

15. It is often difficult to determine the age in connection with offences under Sections 376 and 386, Indian Penal Code. Accurate and detailed authentic registration of births is likely to minimise the difficulty.

16. My answer to this question is in the negative. It is as much difficult to determine rightly the age of a girl below 14 as that of one of 14 years or above. Some girls become more physically developed and look older than their precise real age while some are quite the reverse.

17. My answer to the first sentence of this question is in the affirmative. The offence between the married couple should be excluded from the purview of Sec-

tions 375 and 376, Indian Penal Code. For, in my opinion, it is more an offence relating to marriage, its proper place being in Chapter XX of the Indian Penal Code, than an offence affecting the human body under Chapter XVI. The offending husband violates the right principle of marriage by inducing or compelling his wife to submit to cohabitation with him when she is physically unfit to discharge such marital duties with him. In other words, soon after his marriage he assumes a right which has not yet really accrued to him. The injury to the wife's body is a secondary thing, the idea of which might have never occurred to him till too late.

I would keep the maximum punishment and the procedure for trial, etc., the same as for an offence under Section 497, Indian Penal Code.

The punishment and procedure for extra-marital cases should remain the same as given in Section 376, Indian Penal Code.

18. I have already discussed this question in my answer to question No. 17.

19. No husband should be prosecuted except on the complaint of any of the following persons :—(1) wife raped, (2) her father, (3) in his absence the surviving male member of the family if his family was joint, (4) her mother if the family was separate, (5) the headman of the village or the Municipal Commissioner in charge of the Mohalla in which the offence took place, and (6) the District Magistrate.

20. I am in favour of both the legislations, namely, (1) fixing a higher Age of Consent and (2) fixing the minimum age of marriage. I think the one is not only an adjunct of the other but it is also necessary that both the legislations should be enacted unless the minimum marriageable age is kept the same as the Age of Consent. I may illustrate what I mean. Suppose the minimum marriageable age is 16 years and the Age of Consent is also the same, then the legislation fixing the minimum marriageable age alone is sufficient. But if it is lower than the Age of Consent then both the legislations are necessary. In the last named case the legislation fixing a higher age of consent will be more effective. For, in spite of the validity of marriage at a lower age the higher Age of Consent will prevent its consummation. The view that I take renders it unnecessary for me to answer the second sentence of the question under consideration.

21. I would prefer to rely on the strengthening of the penal law. The moral effect of such a law would be very great, and thus the desired reform will be more speedily carried out.

My experience of the working of the social reforms is that at least some of the workers in those fields are either lip-reformers or cowards; and thus the progress of reforms is not, and can never be, so speedy and certain as by means of legislation. I am aware of workers in the field of social reform who, when providentially offered an opportunity to carry out the reforms, which they advocate for others, in their own individual cases, or family, do acts which prove otherwise. For instance an advocate of the abolition of the dowry system, when going to marry his own son or grandson, not only demands an exorbitant dowry but takes bonds for the whole or part that cannot be readily paid.

Another enthusiastic advocate of widow marriage, who brought about a number of such marriages, became a widower and had children from his late wife. In spite of all inducements and arguments to dissuade him, he immediately married a maid. I can state several other similar instances.

The existence of the Hindu Widow Re-marriage Act (No. 15 of 1856) on the Statute Book accounts for by far the largest number of widow marriages; and if the obstacle contained in the forfeiture clause embodied in Section 2 of the Act be removed a number of such marriages might take place in the families of landlords and millionaires. This obstacle consists in the provision that as soon as a widow re-marries she loses all her rights in the property of her late husband. In my opinion there is no sound reason for the existence of this forfeiture clause in the second quarter of the present century and the sooner it is removed the more it will add to the credit of the Legislature and equally great will be the promotion of morality.

**Written Statement, dated the 11th August 1928, of Rai Bahadur TARA DUTT GAIROLA, M.A., Vakil and Ex-M.L.C., Pauri.**

1. I have not been aware during my professional experience of 28 years of any dissatisfaction with the present law on the Age of Consent.

2. But as social reform in this country is unfortunately very slow and the people are generally slaves of old customs whether good or bad it is necessary to keep pace with other advanced countries to effect some reform by legislature.

3. There are not many cases of rape in this district within the meaning of clause 5 of Section 375. But cases of seduction are more frequent.

The amendment of 1925 raising the Age of Consent to 14 years has not, in my opinion, appreciably succeeded on preventing or reducing cases of rape or seduction mentioned in the question.

4. No. Such cases of rape are not brought to light, as, if reported, the husband would either illtreat or abandon his wife afterwards and the condition of the wife would become miserable for ever.

I am afraid mere legislature on this matter will not be effective. Our leaders should carry on vigorous social propaganda to postpone the consummation of marriage or put off marriage beyond 14 years.

5. The usual age of puberty in this district is between 15 and 16 years. This applies to all castes or classes.

6. Yes. The reply to clauses 1 and 2 under this para. is in the affirmative. The reply to clause 3 is in the negative.

I have not come across any case under any of the 3 clauses mentioned above.

7. So far as I am aware there is no religious injunction sanctioning the practice of early consummation before the wife's puberty. On the contrary the Hindu *Shastras* enjoin that a husband should cohabit with his wife during the period of monthly course only which is a clear authority that he cannot cohabit before the girl attains puberty.

8. The ceremony of *Gama* which is locally called *Duragaman* is performed in the district. It does not necessarily coincide with the consummation of marriage nor is it necessarily performed after the attainment of puberty. The common practice in the district is to perform *Duragaman* ceremony at any time after the marriage.

9. I am of the opinion that we should follow nature in this respect, and the fact of attainment of puberty by a girl should be sufficient indication of her physical maturity to justify her consummation. Long postponement of the consummation of marriage after the attainment of puberty is apt to lead to vices. I have seen girls in these hills fully developed physically on the attainment of puberty, and their children quite healthy. On the other hand I have seen cases of girls whose marriages were long delayed after the attainment of puberty, physically weak and their progeny equally weak.

10. At the age of attaining puberty.

11. I have already replied this question under question No. 9 above.

12. As stated above consummation at attaining puberty would not in my opinion lead to high maternal and infantile mortality or any other results affecting the progress of the people.

13. The educated classes are now realising the mistake of early marriages as defined above, but the public opinion so far as I am aware never thought of an extension of the Age of Consent since the amendment of law in 1925.

14. The educated classes are now realising the mistake of early consummation of marriage, but the masses still favour early consummation of marriage for their children.

15. So far as my professional experience goes it becomes very difficult to determine the age of girls in connection of offences under Sections 375 and 376, Indian

Penal Code. The only evidence on which the court generally relies is the medical evidence which in majority of cases specially in the Muffussil is not satisfactory. I am afraid there will be extreme difficulty in ascertaining whether a girl is 13 or 14 years of age. In my opinion the practical solution of the difficulty is to let the law remain as at present in the case of a husband and wife and to raise the Age of Consent under clause 5 of Section 375, Indian Penal Code, to 16 years.

16. I have already given my opinion in reply to the last foregoing question.

17. As suggested above I would make extra-marital and marital offences separate. In the former case I think the punishment of transportation of life is too severe and punishment of imprisonment of either description extending to 10 and 5 years will be sufficient while in the latter case the punishment given in Section 376, Indian Penal Code is adequate.

18. I am in favour of making a difference in the procedure of trials for offences within and without the marital state. The trials for offences within marital state should be held *in camera* and the investigation of such cases should be entrusted to a Police Officer of a rank not less than an Inspector of Police.

19. If the investigations and trials of cases under report are carried on as suggested in my reply to question No. 18 above, the danger of collusion mentioned in this question can be remedied.

20. I am of opinion that the legislation fixing the maximum age of marriage will be more effective than fixing a higher Age of Consent for marital cases. I think the public opinion in this district would favour my suggestion.

21. I am of opinion that the marriageable age of girls should be fixed at 14 by legislature. The progress of social reform in this country is unfortunately painfully slow.

In conclusion I wish to give as my considered opinion on Sir Hari Singh Gaur's Bill that the Age of Consent in the case of a stranger should be 16 years while in the case of a husband the Age of Consent should remain 13 as at present. I may also add that my wife who was married at the age of 14 and is a fairly intelligent lady agrees with me in what I have stated.

### **Written Statement, dated the 4th August 1928, of the President, Bar Association, Kheri, Lakhimpur.**

1. The educated section of the Community is dissatisfied with the state of law as to the Age of Consent as contained in Sections 375 and 376 Indian Penal Code. The low age at which sexual intercourse in this country commences is largely responsible for the miserable condition of the residents of this country.

2. Early consummation of marriage presupposes early marriage and early marriage stands in the way of female education. The illiteracy of females is itself a great drawback in the development of the country. For the manly growth of the nation the age of marriage should be enhanced and similarly consummation of marriage below the age of growth should be made an offence.

There are no valid circumstances justifying the retention of the present law of the Age of Consent.

3. The crimes of seduction and rape are not very frequent. It cannot be said that the change in the law has had much effect. For marital state the age of consummation of marriage should be raised to 14 years and outside marital state it should be made an offence if a man has sexual intercourse with a woman below the age of 16 years.

4. As stated previously nothing can be said about the effect of the amendment of the law in 1925. But public opinion is moving in the direction of raising the age of marriage.

The amendment of law as proposed will have great effect.

5. The usual age of puberty is 13 to 15 years according to the circumstances of the families. Well-fed girls attain puberty earlier than girls of poor families.

6. Cohabitation is common soon after puberty.

Cases seldom come to Court.

7. Religious injunction has got nothing to do with consummation of marriage. There are customs amongst the people under the force of which people marry their children in childhood and when there are early marriages early consummation thereof necessarily follows.

8. *Gama* is usually performed in this part of the country. It coincides with the consummation of marriage. It is performed generally after the attainment of puberty.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity for consummation of marriage. To ensure the health of the girl and her progeny consummation should take place three years after the appearance of the signs of puberty.

10. Sixteen years.

11. I have come across cases where immature girls have given birth to children but they have invariably died and the girls have remained in emaciated condition. It is difficult to give details of such cases. Members of this bar have come across cases in Court where sexual intercourse with immature girls has resulted in serious injury to her private parts.

12. Early marriage and its early consummation is mainly responsible for the fallen condition of the people and high maternal and infantile mortality. It has also affected the intellectual and physical progress of the people.

13. The development of public opinion is confined to educated classes only who now realize the evil effect of early consummation of marriage. It cannot be said that the amendment of law has had this effect. The uneducated masses will be guided on right lines when the law will penalize early consummation of marriage.

14. No.

15. Yes. In every case that comes before the Court the question of age becomes material and Courts are generally guided by medical evidence which is often all *opinion* and not a *fact*. The work of writing birth and death registers should be entrusted to *Patwaris* who are literate as the *Chowki dars* are generally illiterate. The person making entries in the birth register should also take the signature or thumb impression of the father or guardian of the child to ensure the correctness of entries regarding birth.

16. The raising of age to 14 years will not make much difference as the margin of error will continue the same as before with slight variation. The signs of puberty will be more prominent at 14 than they are at 13.

17. Yes. I approve of the suggested legislation in this matter. The punishment prescribed therein is sufficient. It is hoped that with the growth of the public opinion and knowledge of the people regarding penal law offences in marital state will be rare.

18. The offences in marital state should be started by the District Magistrate.

19. The answer is the same as that of the previous question.

20. Early consummation of marriage can be effectively prevented, by prevention of early marriage. The public opinion generally follows good legislation. At present marriages in India take place even while the children are in womb and census reports show that there are widows below the age of 5 years. If the Government passes the law that the marriages of children below the particular age are criminal the people will in course of time adopt the law and conform to it. Even if the Government passes the law fixing the minimum age of marriage public opinion will adopt it.

21. I would prefer the strengthening of the penal law to secure the object in view.



**Written Statement, dated the 13th August 1928, of Mr. R. L. SHRI-VASTAV, Assistant Sessions and Sub-Judge, Basti.**

1. There does not appear to be any dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.

2. In my opinion the present age of consent must be retained, because generally girls are married at the age of 13, so far as educated masses of the public of India are concerned, and generally by that age they become sufficiently mature to enter into marital connections.

3. Crimes of seduction or rape are not frequent in this part of the country. I do not think that the raising of the age of consent to 14 in 1925 has succeeded in any way in preventing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. In India the parents or guardians of such wronged girls generally show great apathy in reporting such cases of rape or seduction to the proper authorities. They consider this a dishonour to them to make the aforesaid wrong committed towards their girls publicly, for fear of keeping those girls, if unmarried, from being so kept for ever, or if married, from being turned out by their husbands. Therefore, to make the law more effective I would suggest that if any such cases of suppression are ever brought to light, not only the offender, but the parents or guardians of the girls also, should be punished, either by infliction of some fine or by meting out the punishment of simple imprisonment. Even the Police chaukidars too, if found guilty of such suppression, should be severely dealt with departmentally.

4. I do not think that the amendment of 1926 has protected married girls against cohabitation with husbands, neither it is possible to take any effective measure to stop such crimes, unless the ignorant and uneducated mass of the lower classes is not sufficiently enlightened by education or otherwise to marry their girls at some higher age.

5. The girls in this part of the country generally attain puberty by the age of 11 or 12 years. I do not know whether it differs or not in different castes.

6. I think cohabitation is common in this part of the country among the lower classes of people before the girl completes 13 years or attains puberty. No such cases ever come to Court.

7. Early consummation of marriage before or at puberty is surely due to religious injunction. All the early Hindu writers inculcate the giving of girl in marriage before she attains puberty. The father who fails to do so incurs the guilt of slaying an embryo after the evidence of maturity have appeared. Though the penalty mentioned above, so to speak, is nothing, but the religious bend of the Indian mind thinks the breaking of a religious injunction as far more heinous crime than any other act.

8. "Gaona" ceremony is performed usually in this part of the country, but it does not necessarily coincide with the attainment of puberty. In some cases it may be before the attainment of puberty, as in the case of lower caste people. 'Gaona' is only performed after the attainment of puberty, i.e. a year or so after it in the case of educated people.

9. Though generally attainment of puberty does indicate sufficient physical maturity to justify consummation of marriage, but it is far more safe to postpone the consummation of marriage for at least a year or two more, i.e. up to the age of 14 to attain sufficient physical development, and to enter into consummation of marriage without injury to her health or body or to badly affect her progenies.

10. Girls in India at the age of 12 are sufficiently intelligent to give consent to cohabitation with due realization of consequences.

11. I have often come across cases in which cohabitation before puberty had resulted in injury to the girl's health and prejudicially affected her progeny—

- (a) A girl of the age of 10 was married to a boy of 18 years of age. She had her private parts badly lacerated and mangled with the result that she suffered badly from hemorrhage and died in the hospital when it was got operated at the age of 16.
- (b) Another girl of the age of 11 was married to a boy of 24 years of age. The girl appeared physically of strong constitution but she was attacked with leucorrhœa and was unable to walk properly for a distance of even 100 yards or so. She had two puny girls born at the ages of 13 and 15 who being weak by birth, died within a month or two of their birth. After that she had one more son at the age of 20 who though still living is quite weak and always suffers from asthma and fever, etc. The mother is now reported to be suffering from consumption.

There were several such other cases.

I never came across any case in which cohabitation after puberty resulted in a serious injury to her health or body or badly affected her progenies.

12. Early consummation and early maternity is surely responsible for high maternal and infantile mortality and affects vitally the physical progress of the people of India.

13. No further development of public opinion in this part of the country is visible in favour of an extension of the age of consent.

14. Generally the women of low castes and uneducated masses in this part of the country favour early consummation of marriage of their children.

15 & 16. No such cases came to my notice.

17 & 18. To me it does not appear necessary to separate extra-marital and marital offences into different offences or to make difference in the procedure of trials of such offences.

19. I have already made a suggestion in reply to question 3.

20 & 21. In my opinion if the age of consent is after all raised then a penal legislation fixing a higher age of consent for marital cases is likely to be more effective than the legislation fixing the minimum age of marriage. But after all I think the strengthening of the Penal Law cannot secure the object in view. Only the progress of social reform by means of education and social propaganda can fully stop this fatality.

**Written Statement, dated 9th August 1928, of Pandit KAMLAKAR DJBE,  
M.A., Deputy Collector, Ballia.**

1. I have come across very few cases in which girls above the age of 13 years were alleged to have been raped. Such cases are mostly unsuccessful because of the fact that it is generally found that the girls had consented to cohabitation. What happens often in such cases is that the girls are a willing party but if, while engaged in intercourse, they are by chance seen by some people they raise an alarm and lend the whole affair a colour of rape in order to save their honour. When such cases are put before Court, the question as to whether the girls were a willing and consenting party or not invariably arises and is in a majority of cases decided in the affirmative. I know of a case in which the girl was about 15 or 16 years old and was genuinely raped but when the case was put before Court, all sorts of pressure were brought to bear on her and her parents with the result that she changed her statement in such a way as to show that she had given her consent to cohabitation. A number of rape cases occur in villages which never see the light of the day and are never brought up to Court, if the girls are above thirteen

years of age for undue pressure is brought to bear on them so that they may give their statements in a way showing that they were a willing party. It is an open secret that low caste girls are sometimes molested and raped by village yokels of some influence with impunity for the age of consent stands in the way of successful prosecutions. Thus there is dissatisfaction with the state of the law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code.

2. I have above shown the circumstances in which the age of consent as it is stands in the way of successful prosecution of genuine rape cases. In this part of the country a girl, as soon as she becomes 13 years of age, has an inquisitive mind as to what sexuality means. Any young man taking undue advantage of the inquisitiveness is likely to persuade her to try to learn the game and enjoy it. This inquisitiveness lasts in an intense form till the age of 16 years, specially when the girl lives in such environments where she has had more occasions to see and hear about sexuality. The intensity of inquisitiveness varies with the progress of the girl's physical development which becomes almost perfect at the age of 16 years. In my opinion, a girl needs special protection from the age of 13 years to that of 16 years. There is a belief among a section of ignorant people who are licentious and given to debauchery that cohabitation with a girl just before she begins to menstruate rejuvenates the men cohabitating with her or at best adds fresh vitality to his nervous system. Howsoever false the belief may be, it makes a number of girls an easy prey to sexual brutalities before they attain full puberty. The usual period of the commencement of menstruation in this part of the country is between 14 and 15 years of age. The present age of consent cannot protect such girls from the inhumanities to which they are likely to be subjected at a tender age. All these considerations inevitably lead one to the conclusion that the age of consent should be fixed at 16 years.

3. I am afraid, a majority of genuine rape cases are hushed up when the girl sustains no injury to her private parts and keeps quiet in order to save her honour and that of her family. Only those cases in which the girls are of a tender age and sustain injuries to their private parts are brought to light, and sent to Court. A majority of such cases are successfully prosecuted without difficulty for consent is immaterial if the girl is below 14 years of age and there are injuries to their private parts to show that they have been ravished. Crimes of rape may not be frequent in this part of the country but crimes of seduction are very common. The chief difficulty in detecting such crimes lies in the fact that, when a girl runs away, her parents or relations do not care for her specially if she is a widow. As a result a number of such cases are not even reported to the Police, for any publicity given the matter brings dishonour on the innocent members of the girl's family. They consider it wise to leave her alone. I never came across any case in which concealment of such a crime met with any punishment. Although seduction plays a havoc in this part of the country, still no public man seems to care for it. In my opinion, every case of seduction must be reported to the Police by the head of the family to which the girl belonged; an omission to do so should be treated as concealment of an offence which should be suitably dealt with. This will make the law effective and will also make people take proper care of their girls. Whenever a girl runs away or is seduced by some one, there is always some sort of rumour current in the village in which the incident occurs. It should be enjoined on the police to take it into consideration and find out if it is true or baseless. In this way it is likely that a number of genuine cases of seduction may be brought to light.

4. In good families the husband and the wife are not allowed to have access to each other until they have attained puberty at whatever age they may have been married. Among low caste people also the husband and the wife have nothing to do with each other until they have attained puberty, though they were married when they were children. Among Brahmans in this part of the country in most cases the wives are older than husbands. Among Kayasthas, a girl is seldom married before she is thirteen years old. In short among high caste people in this part of the country the marriage of a girl before the age of 13 is rare. The age of consent either past or present has not affected any couple within the marital state

in good families. But what is a real menace to the society is buying of girls for the purposes of marriage. Sometimes a girl of 6 or 7 years is sold to a man of 40 or 50 years, and the law of the age of consent within the marital state is invariably violated by the husband of such girl. But such cases are few and far between. In this part of the country, in a good many cases the wives are older than husbands, and the fact that such husbands at a tender age have to cohabit with their grown up wives has been telling upon the health of the former and their progeny. Public opinion needs to be stimulated in this direction so that a boy of 10 years should not have a wife of 18 or 20 years.

5. The usual age at which girls begin to menstruate in this part of the country is between 14 and 15 years. This seems to be almost the same in all castes, communities or classes of society. A little after the commencement of menstruation a girl is considered to have attained puberty, but in my opinion full puberty is attained at the age of 16 in normal cases.

6. (1) A girl who has fallen into bad society and lives in bad environments is sometimes subjected to cohabitation before puberty, but this happens when she begins to live in adultery. A girl of a tender age bought for the purpose of marriage is also subjected to cohabitation before puberty. But cohabitation before puberty is not common in this part of the country among any class or classes of people.

(2) Cohabitation soon after puberty takes place to a certain extent among all classes of people specially where child marriages take place. Neither the parents of the husband nor those of the wife can afford to wait long after she has attained puberty.

(3) Cohabitation before the girl completes 13 years takes place in the cases described under (1).

Such cases come to Court specially when the girl is of a tender age and has sustained injuries in her private parts.

7. No. Among Hindus whatever may be the age fixed for marriage by religious injunction cohabitation before menstruation is considered to be a sin. Among them marriage is a religious sacrament and meant for procreation. Cohabitation is permissible only after menstruation every month.

8. 'Garbhadhun' ceremony is confined to a limited number of families in this part of the country. Usually 'Gaona ceremony' takes place. Sometimes it is performed at an auspicious time for the sake of the ceremony only and has nothing to do with consummation of marriage. After 'Gaona' the consummation of marriage takes place among good families only when the couple are considered physically fit for cohabitation. In a majority of cases it is performed after the attainment of puberty. A girl is supposed to be fit for cohabitation any time after the commencement of menstruation in this part of the country nowsoever erroneous this notion may be.

9. I have stated above that the usual period for a girl to begin to menstruate in this part of the country is between 14 and 15 years. At least one year's time more should be allowed for attainment of physical maturity before consummation of marriage takes place. In my opinion in this part of the country a girl at the age of 16 years may be considered fit for cohabitation without injury to her own health and that of her progeny.

10. At the age of 16 years, in my opinion, taking all the facts stated above into consideration.

11. I know of a case in which a man of about 40 years bought a girl of 10 or 11 years and married her. About two years after the marriage she became pregnant and gave birth to a child which died after two months. The upper part of the body bent down and she could not stand erect and walk properly. She has now (6 or 7 years after the marriage) become a practically useless woman.

12. In cities Indian ladies are kept in secluded apartments and do not enjoy fresh air and good sunshine with the result that the progress of their health is ham-

pered at a time when they begin to grow into womanhood. Early consummation and early maternity constitute a great strain on their nervous system specially when their health is not in satisfactory condition. Naturally children born of such weak mothers are of weak constitution. They can never be strong either intellectually or physically. Early consummation and early maternity is, in my opinion, one of the causes for high maternal and infantile mortality.

13. None. This district (Ballia) in which I am serving is very backward.

14. Woman in this part of the country have no voice in shaping their career. They appear like dumb-driven cattle. In good families also women are not properly taken care of and very bad treatment is meted out to Hindu widows.

15. We mostly depend on the certificate of a medical officer for determination of the age of girls in connection with offences under Sections 375 and 376, Indian Penal Code. There is no difficulty in securing the help of the Civil Surgeon or his Assistant in this matter. It is seldom that any proof is forthcoming to contradict the opinion of the medical officer. But difficulties arise when two medical officers differ as to the age of a girl. In such cases we have to look to the birth register or the genuine horoscope but such cases are few and far between.

16. In my opinion, whatever may be the age-limit the difficulty or margin of error would be the same if the age of a girl is in the neighbourhood of the fixed limit. For instance if the age limit is 14 years, there is always difficulty in determining the age of a girl if she is about 14 years of age, that is to say, a few months above or below 14 years. If she is below 14 years of age, her consent is immaterial and the case in which she has been raped becomes easy. In my opinion if the birth-register is properly maintained, the difficulty can be obviated considerably.

17. There is no doubt that a husband has every right to have easy access to his wife, but this right should not be abused in such a way as to ignore the interests of the wife. Such husbands who have no regard for the welfare of their wives should be more strictly dealt with than an irresponsible man raping a strange girl. Any leniency or differential treatment in the case of an accused husband would be putting a premium on a man's brutal conduct towards his wife. I would keep the same offence for both the classes of accused persons. The punishment at present prescribed by Section 376, Indian Penal Code, is in my opinion adequate.

18. Because of what I have stated just above I would make a difference in the procedure of trials for offences within and without the marital state.

19. I have offered my humble suggestions on this point under question No. 2 above.

20. At whatever age a girl may be married but the consummation of marriage should not take place before she is physically fit for cohabitation. For this purpose penal legislature fixing a higher age of consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. Child marriages among high caste Hindus should be avoided in order to reduce the number of girl widows. But this is another story. People of this part of the country seem to favour penal legislation fixing a higher age of consent for marital cases.

21. It is no use putting off the evil day as far as possible and rely on the progress of social reform by means of education and social propaganda. The latter process may take half a century to secure the object in view. I would prefer to rely on the strengthening of the penal law to attain the object.

**Written Statement, dated the 16th August 1928, of Babu FATEH BAHADUR VARMA SAHIB, B.A., LL.B., District and Sessions Judge, Hardoi.**

1. Yes.

2. (1) None.

(2) (i) Until 16 a girl has no trained mind.

(ii) Until 16 a girl is most likely to be easily deceived.

(iii) The innumerable child deaths occurring in India being so largely noticeable among children born of girls married before 16.

(iv) High rate of mortality amongst young men and women in India is mainly due to excesses after early marriages.

(v) Early marriages interfering so largely with the training of young husbands and impairing their chances in life.

(vi) In many cases brought to Court medical men are unable to state definitely the age of the raped girl.

3. Crimes of seduction and rape are frequent in the United Provinces of Agra and Oudh. I do not think the amendment of 1925 has succeeded to any large extent in reducing the cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I would propose that the punishment under Sections 366, 367, 371, 372 and 373 should be extended to transportation for life with a minimum of five years.

4. (1) No.

(2) Public opinion has been stimulated to a very small degree only.

(3) No. Amongst the enlightened people marriages are put off beyond 13 in many cases but mostly on considerations of the girl's education and not in consequence of the amendment of 1925 raising the age of consent. Early marriages should be penalized.

5. The usual age of puberty in the United Provinces may be taken as 13 or 14. I do not think there is any noticeable difference about the age of puberty in different castes, communities and classes of society.

6. (1) Not very common.

(2) Yes.

(3) Not very common. Cases of premature cohabitation never come to Court.

7. No.

8. Yes, but in certain communities on consideration of economy the custom is coming in vogue to make the ceremonial part of Gaona simultaneous with the marriage ceremony. The Gaona ceremony coincides with the consummation of marriage. It is performed generally soon after the attainment of puberty.

9. No. Consummation at 16, that is to say, 2 or 3 years after the attainment of puberty appears to be justified.

10. I should think at 16.

11. Yes. Too many details cannot be given for want of space. Details of injury sustained with regard to each particular age prior to full physical development of girls may be furnished by the medical authorities. My experience shows that Leucorrhœa, Dysmenorrhœa, Amenorrhœa, Menorrhœa, Metrorrhœa, all forms of Uterine displacement, brain-fag, Nuerasthenia, deaths during and shortly after labour, numerous ailments attending parturition not infrequently developing into Typhoid, various forms of Phthisis, Scrofula, Hysteria and like diseases are the natural outcome of cohabitation being commenced before full physical development of girls and the appalling death rates amongst children up to 12 or even older ones is also very largely ascribable to the same cause. The disease and mortality statistics, I presume, furnish ample evidence about this.

12. Most certainly.

13. Yes. The development of public opinion in the United Provinces is general.

14. No.

15. Yes. The difficulty will be minimized by raising the age of consent to 16.

16. Yes.

17. No, distinction need be made between marital and extra-marital offences where the age of the girl is below 13 as even on the marital side the evil is doing havoc and requires to be effectively checked.

18. No difference.

19. A committee consisting of the senior Munsif, a Deputy Collector nominated by the District Magistrate and the Secretary of the local Bar Association should be formed at the head-quarters of each district and the sanction of the majority of the committee should be made a condition precedent to the investigation by the police of any offence of the nature contemplated which is alleged to have occurred within the marital state. This will, in my opinion, be a good safeguard against improper prosecution as well as extortion. Considering the legal rights of the accused no safeguard against collusion to protect the offender need be provided and the matter may be left to the good sense and discrimination of the trial Courts.

20. Both the measures seem to be equally necessary. Both the alternative appear to be in consonance with public opinion in the United Provinces.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view.

**Written Statement, dated the 13th August 1928, of Mr. MOHINI MOHAN LAL, Offg. Deputy Commissioner, Gonda.**

1. As far as I am aware there is no dissatisfaction among the ordinary masses with the state of the law as to the age of consent as it at present exists. Enlightened public opinion, however, seems to consider strongly that an advance is required in the direction proposed by Sir Hari Singh Gaur.

2. (1) In my opinion the only circumstances that could be said to justify the retaining of the law of the age of consent as it is, could be said to be the conservatism of the masses but as against this there are the following considerations which, I think, would justify our making an advance on the present law :—

- (a) Girls do not attain discretion before 16,
- (b) the poverty of the masses going side by side with illiteracy makes girls an easy prey to immoral seducers,
- (c) sexual intercourse at an early age undermines the health of the girl and is calculated to make her give birth to unhealthy children, and
- (d) the ordinary masses will not yield to reason unless legal deterrents are provided.

3. Crimes of rape and seduction seem to be fairly frequent in this part of the country and the amendment of the law made in 1925 has had no substantial effect towards reduction. To quote figures there were 8 cases of rape and 16 of kidnapping or abduction reported in 1925; in 1926 there were 10 reports of rape and 16 of abduction, etc., and in 1927 there were 8 cases of the former and 26 of the latter. In 1928 conditions seem to be similar.

The poverty and the illiteracy of the masses are a great drawback and I think it would perhaps be a move in the right direction to start panchayats in selected villages with the object of educating public opinion in the matter.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been effective in protecting married girls within the meaning of the question. Cases in which a wife would lodge a complaint against her husband would be rare to the extent of being almost nil. The parents are as a rule averse to any prosecution in such cases and the girls themselves would not disclose the facts owing to modesty. Owing to illiteracy the ordinary masses do not appreciate the advantages or the disadvantages of such actions, and it appears that the only effective remedy would be to penalize marriage itself before 16 in the case of girls. As affairs exist at present marriages of daughters among the illiterate masses take place at the age of even 3 months and before 11 years generally.

5. Girls attain puberty at the age of between 13 to 14 but conditions vary in as much as rich food, the use of meat and other conditions leading to good or bad health would naturally have their effect.

6. Among low caste people where child marriage seems to be the rule and also amongst the uneducated higher classes cohabitation with married wives below the age of 13 is suspected to be common, but these cases seldom if ever come to court.

7. \* \* \* \* \*

8. 'Gaona' is generally performed after the attainment of puberty and as soon after it as possible; but cases are not rare in which it takes place before the attainment of puberty also.

9. In a warm country like India the attainment of puberty itself should not be a sufficient indication of physical maturity to justify consummation of marriage and I consider that a period of two years thereafter would be a good minimum. During this period a girl would become well developed and attain discretion.

10. At the age of 16 when she attains discretion.

11. It is difficult to give details of the cases in question.

12. In my opinion the high maternal and infantile mortality is to a large extent due to early consummation and to early maternity. It is also responsible for the new generation being in a large number of cases a herd of weaklings who are generally the victims of some disease or another.

13. Except for the advanced educated classes there has been no further development of public opinion within the meaning of the question.

14. Owing to general illiteracy women are in favour of early consummation of marriage for their children, one reason for which is that love for grandchildren is supreme in their heart.

15. Difficulties are not uncommon in determining the age of girls as illiterate parents do not in a very large majority of cases know the correct ages of their children, they may sometimes be unwilling to mention the correct age for various reasons and they generally keep no record of ages. The medical evidence would be dependent on physical development which would vary with different persons. Greater strictness as regards the record of births and deaths now maintained might minimize the evil to some extent.

16. The difficulty or margin of error in determining the age might be minimized to a certain extent at least if the age of consent is raised to 14 years or above as physical development is not so marked generally from 12 to 14 as from 14 to 16.

17 & 18. The only change that I would suggest is that trials for offences within the marital state be ordered to be held in camera as this will possibly serve as an encouragement towards bringing more cases of an offence of that nature to light.

19. I have no remedies to suggest.

20. In my opinion the legislation fixing the minimum age of marriage would be more effective and would also be in consonance with advanced public opinion. Much leeway has yet to be made up before ordinary public opinion will advance and once marriage is celebrated it becomes so difficult to exercise suitable check over cohabitation.

21. In view of existing conditions I would prefer to rely on the strengthening of the penal law as any progress of social reform by means of education and social propaganda would be rather so slow as almost to defeat its object.

**Written Statement, dated the 14th August 1928, of Mr. H. P. SAKSENA,  
Managing Editor, Oudh Akhbar, Lucknow.**

1. When the Age of Consent Bill was passed in 1925, the Legislators piously wished that cases of rape both within and outside the marital state, would stop altogether and that the law in question would be a panacea for all evils under this



head. But the frequency of the cases of rape especially outside the marital state during the last three years must have proved to the legislators themselves that the law on the subject has been totally impotent even in checking the evil which it was intended to uproot. The law in question therefore is not locked upon with favour because (1) it has not reduced the number of rape cases outside the marital state, (2) it has disturbed the sphere of domestic happiness by operating within the marital state and causing unnecessary annoyance to parties which would otherwise live on good terms, (3) it has thrown ample opportunities to evilly-disposed persons to pay off old scores and satisfy old animosities by playing upon the credulity of simple-minded persons and persuading them to complain under section 375 or 376, Indian Penal Code, against the husbands of the sisters or daughters of their old enemies.

The law therefore stands in need of amendment in cases of rape outside the marital state and of repeal within the marital state.

2. The law of the age of consent should not be retained as it is a minute longer. As pointed out above, it should be repealed so far as the sphere of marital state is concerned and outside the marital state, the age limit should be raised to sixteen as proposed by Dr. Sir Hari Singh Gaur.

3. Police Administration reports and cases of abduction and rape reported in the newspapers under the head 'Law Courts' show that the evil is on the increase and the amendment of 1925 raising the age of consent to 14 years has done little, if any, good towards reducing the cases of rape outside the marital state. Cases of rape within the marital state do not generally see the light of day and hence no opinion can be expressed about them. The remedy for the latter, however, lies in nipping the evil in the bud and passing a lawmaking the marriages of girls and boys before a certain fixed period of age, illegal, e.g. the acceptance of a measure like that of Mr. Har Bilas Sarada.

It is hard to support any measures to make the existing law effective in view of bitter experience and sad disappointment in relation to its effectiveness in the past. To my mind, the law has failed to achieve the object it was intended to accomplish. The raising of age of consent to 16 may prove helpful outside the marital state.

4. The amendment of 1925 might have had some slight check in protecting married girls against cohabitation with husbands within the prescribed age-limit for fear of prosecution but it has not stimulated public opinion to any appreciable extent in that direction, for once the marriage is performed and the girl has attained puberty which some girls do attain even before the age of 13, cohabitation generally takes place, the law of the age of consent notwithstanding. The putting off of the marriage of girls beyond the age of 13 is taking place but not very rapidly and some communities, both amongst the Hindus and the Mohammedans, still take delight in celebrating "baby" marriages.

Early-marriages can best be stopped by means of a law on the subject and by sound primary education to the masses with special reference to the disadvantages, both hygienic and progenic, arising from early marriages.

5. The age of puberty varies materially with communities and social status of people. Climatic conditions also affect the attainment of puberty. Girls belonging to a low strata of society who enjoy a comparatively free life attain puberty earlier than those whose development is marred by being shut up within the four walls of the house.

The usual age at which girls in general attain puberty may be placed between 13 and 14.

6. (1) No. It is rather unthinkable.

(2) It begins some time after puberty, the intervening period may be more or less.

(3) As the girls do not generally attain puberty before the completion of 13 years, the question of cohabitation before that period does not arise. The cases of this nature are very few.

(7) Both Hindu and Muhammadan religions do not enjoin the consummation of marriage before or at puberty. Their laws are silent at this point.

The other part of question does not arise.

(8) Gauna ceremony is performed in this part of the country both at the time of the marriage as well as after it. The consummation of marriages takes place after the Gauna ceremony. It is generally performed sometime after the attainment of puberty but no definite period of time can be fixed.

9. (1) Yes. (2) Does not arise.

10. At ages varying between 13 and 16, with reference to the degree of intelligence possessed by the girl.

11. There is a consensus on this point that forced puberty is a very great sin to which death should be preferred. It spoils the girl's health, it stifles her development, it kills her enthusiasm and in cases of maternity it swells infantile mortality. The appalling death-rate amongst the females of India and heavy death-roll of children bear testimony to the evil consequences of cohabitation before full physical development.

12. High maternal and infantile mortality is primarily due to abject poverty, lack of nourishing food, excess of cares, worries and anxieties as well as to early consummation and early maternity; if the former causes were removed the intensity of the latter will be very much diminished.

13. None, so far as the question of the age of consent is concerned. Public opinion is however very keen on the necessity of some law preventing early marriage and mass meetings especially those arranged by women are being held all over the country in support of Mr. Sarda's bill. Some orthodox type of people are, on the other hand, raising their feeble voice against the promulgation of the law relating to the prevention of early marriage.

14. Yes. It is a proclivity common to women-folk of this part of the country as a whole with the exception of those who are thoroughly educated and enlightened and hold progressive views on the subject.

15. Expert, impartial, and unprejudicial medical opinion is the best guide in such cases.

16. The difficulties will be very much minimised if the age of consent is raised to 14, 15 or even 16 years.

17. A clear-cut and well defined separation is in my opinion quite essential. The two kinds of offences should be dealt on their own merits. Marital rape is certainly not as abominable as extra marital. In cases of marital offences which will vanish in future if the law relating to marriages is passed and early marriages penalised, a nominal punishment or an effective warning may serve the purpose.

In cases of extra-marital offences deterrent and exemplary punishment is called for, the maximum proposed being transportation for life.

18. Cases of rape outside the marital state should be thoroughly exposed to the public gaze and given as wide a publicity as possible so that intending offenders may get overawed and refrain from committing identical offences.

For cases within the marital state, special tribunals composed of influential private individuals of the locality especially authorised to try such cases be appointed so that the parties concerned and their families be spared the scandal which must necessarily result from such trials if they are held in open courts.

19. The existing safeguards are, in my opinion, quite sufficient.

20. (1) No. (2) The latter—the fixing of the minimum age of marriage for the very idea of prosecutions being launched for cases of rape within the marital state is abhorrent to the people of this part of the country.

21. I shall not rely on the strengthening of the penal law to gain the object in view so far as marital cases are concerned but for non-marital cases I am an out-and-out a supporter of its being made more stiff and rigid. Social reform through the extension of education and propaganda work will certainly help

the object in view but it will obviously be a long and dilatory process and I, for one, would not like to wait till then. I would therefore suggest the promulgation of a law at as early a date as possible, penalising marriages of girls before the age of 14 and that of boys below 18, except in very exceptional cases.

Mohammedan opinion is, so far as ascertained, not in favour of the fixing of any age for marriages of boys and girls. My Mohammedan friends hold that marriages of girls in their community are, generally speaking, not held before puberty and further that their religion does not restrict marriage to any fixed age.

**Written Statement, dated the 15th August 1928, of Mr. RAJ BEHARI LAL, Additional District and Sessions Judge, Cawnpore.**

1. The educated classes are not satisfied with the present state of law as to the age of consent and think that the age of consent should be raised.

2. Age of consent should be raised.

An Indian girl is not able to give intelligent consent at the age now fixed by law. There seems to be no good cause for retaining the age of consent as it is now, except that there may be some agitation among uneducated and old typed persons.

3. They are very frequent in U. P. These offences are so frequent that it does not appear that the amendment has produced any deterrent effect. Prescribing of minimum sentence for ordinary cases may have the effect of reducing these offences. In cases where the offence be of technical nature, the court may have the discretion to give less than the minimum sentence for reasons to be recorded.

4. I do not think the amendment of 1925 has produced any effect in any of these ways. Some further raising of age is necessary as the difference between 12 and 13 years is not sufficient.

5. Between 13 and 14 years. Among persons who do not give education freely to their children and the children are not kept engaged in some work, puberty is earlier.

6. I think it is common among the lower classes. No such cases of marital offence have come in my court.

7. No.

8. Yes. It is often after the marriage. Among the educated people it is generally some years after attainment of puberty. Among others there is not much discrimination in this matter.

9. I do not think attainment of puberty to be a sufficient indication in this respect. I think the girl should not be less than 16 years at consummation of marriage, which will be about two years after attaining puberty.

10. 16 years.

11. General observation shows that cohabitation before full physical development of a girl has resulted in injury to her health and that of the child. I am not able to cite specific instances.

12. Yes.

13. Yes. There has been further development of opinion among the educated public in favour of extension of the age of consent in all cases.

14. Among the educated classes it is not so. But it is so among others.

15. I have not experienced any difficulty in this respect.

16. I think the difficulty or margin of error would be reduced if the age of consent is raised.

17. I would like to separate extra-marital and marital offences into different offences. For extra-marital offences the present punishment may be maintained. For marital offences the punishment may be only fine up to Rs. 500, and in cases

in which the offence has resulted in some serious injury to the person of the girl, the punishment may be two years' imprisonment or fine not exceeding Rs. 500 or both.

18. The procedure for trial of non-marital offences may remain as it is. In marital offences the trial may be by the District Magistrate or court of sessions. In marital cases the enquiry may be made by a magistrate and not by police.

20. Legislation fixing the minimum age of marriage is likely to be more effective. It would be more in consonance with the opinion of the educated classes, but the other alternative would be preferred by others.

21. I will prefer the progress of social reform by means of education and social propaganda for marital cases. But under the present condition of society some legislation is necessary.

**Written Statement, dated the 16th August 1928, of Babu ANANT PRASAD VISHARADA, Secretary, Sanatan Dharma Sabha, Hardoi (Oudh).**

1. No dissatisfaction at all, as the present provision of the law is quite in accordance both with the nature of the land and the Dharman Shastra, viz., the girls attain puberty in this region between 13 and 14 years of age and are apt to consummation of marriage. The theory of the Parashar Smriti that the girl attains puberty over 10 years, relates to the hottest regions in the country or in this country in rare cases only. Thus there is no harm if the law of the age of consent should remain as it is now.

2. (1) (a) I have self-experience of the fact that in the age of 15 the women give birth to child and they are seen in sound health if male spouse is over 20 years of age.

(2) So to make an advance on the present law is superficial and useless.

3. (3) No, the crime of rape is not frequent in this part of the country. The amendment of the law made in 1925 makes no material difference in commission of this crime here.

5. Girls attain puberty in this part between the 13 and 14 usually. It does not differ in different castes I believe, as this depends on the climate of the country.

6. (1) No.

(2) Yes.

(3) No.

Only rape cases by other than husbands come to courts and this crime is rare here as the girls of early age do not come in contact with outsiders partly because of Parda system and partly because of the responsibility of the guardians.

7. I attribute the practice of early consummation of marriage before puberty as our Dharam Shastra dictates that the girls should be married before commencement of their monthly-course *vide* Parashar Smriti.

"A girl should be married when she is a 'Kannya' (virgin) up to age of 10 or 12 as after that age monthly-course begins and it is useless to give her in marriage after puberty (as her chastity cannot be vouched after puberty). *Putris* get the matter issued (*Raj*) every month if a girl is not married till she attains puberty."

This law of Parashar is observed only in high classes but other classes get their girls married even up to 15 years, i.e., after they attain puberty. The latter practice is made light of with religious point of view, but the English educated people like it. It is worse with regard to Indian morality as after puberty all the habits of the girls become fixed and it is rather difficult to mould them into the manners of their husbands house hold. There is no penalty prescribed for failing to marry a girl before puberty.

8. Yes. Gauna (second marriage) is generally performed in this part of country but the Garbhadhan ceremony is quite different to Gauna and it is not performed

generally. Sometimes Gauna is performed 2 or 3 or even 4 years after marriage according to the ages of the spouse.

9. Yes.

10. At the age of 15 years.

12. No, as there are unnatural reasons which tell upon health. If the male spouse be 9 years elder than the female, there can be no irregularity or intellectual or physical defects.

14. They do, as in early age they can tend the girls received in marriage according to their wishes with harmony.

17. The marital offences should be classed separately and the human nature should be left responsible for such offences by imposing some fine only according to the convicts income and circumstances.

18. Trial of such cases should be conducted by appointing commissions and not in open court.

21. I prefer to rely on the progress of social reforms by means of education and social propaganda. I am ready to comment on the points dealt with if they are not comprehensive.

**Written Statement, dated the 20th September 1928, of Mr. RAGHUNATH PRASAD, District Judge, Moradabad.**

Before I answer each question separately, I think it proper to put down that my experience is confined mostly to the western districts of United Provinces, and that too generally to the Hindus. In these parts, the girls, even in well-to-do families, are married generally after they have attained the age of fourteen. I have come across girls who have reached the age of sixteen or even of 17 or 18. In these parts, the marriage of a girl at 10 or 12 is not considered essential; and if the girl is not married at that age, no blame attaches to the family of the male relations of the girls. The *Gauna* ceremony is generally prevalent among the Hindus, even for girls who have been married after fourteen. If the girl is unduly developed, or the husband and his relations desire very early consummation, the *Gauna* ceremony is performed within a month or two of marriage, or even combined with the latter; but it is performed as far as is possible. In the lower castes such as Kahars, Malis, etc., the marriage of the girl (if possible) is generally performed when the girl is of tender age. Sometimes she is scarcely six or eight years of age. In these cases, the *Gauna* ceremony always takes place. It comes on generally when the girl is fully mature, and is not only fit for marital intercourse but can also do all the household work. Among the lower castes, too, consummation sometimes takes place before 14 or even at the age of 12 or 13, but the circumstances are generally special. There is either no other female in the family of the husband, or the girl has been purchased, or the husband and his relations cannot control themselves. But where things are altogether normal, and the parties are equally matched, early consummation is not likely. In the eastern districts, i.e., places situate to the east of the Aligarh, the marriageable age among all castes is considered to be 12. It is considered improper that a girl of a respectable family should remain unmarried after 12. The *Gauna* is performed in these Districts also, but consummation generally takes place sometimes at about 14; the *Gauna* is generally performed in the third year of the marriage, when the girl is in her 14th year or has just passed it. There is variation in this also; but there are generally some special circumstances present to account for it. Excepting court work, I have little experience of marriage and consummation among Mohammedans; but my impression is that among Mohammedans of good status and position, the marriage of a girl comes off generally when she is past 14, and is in her 15th or 16th year. There is no *Gauna* in her case, as she undergoes marital intercourse practically from the time of the

marriage. In some of the lower Mohammedans, there is a custom of marriage at tender age in certain classes; but in these classes, consummation is generally postponed till the girl is considered mature by both sides. There are exceptions of course, but mostly due to special causes, which have been noted above. The same thing happens if an early marriage takes place in the case of a Mohammedan of good family and position.

With these preliminary remarks, I proceed to answer the questions *in seriatim*.

1. So far as I know, there is no dissatisfaction with the existing law as to the age of consent.

2. In my opinion, the age of consent should be raised to at least 16 years in the case of persons other than husbands; and in the case of the latter, to at least 14 years. The object of the law is to afford protection not only to the young girls themselves, but also to the persons who are in charge of them. In the case of girls of the immature age of 12, 13 or even 14, it is idle to expect that they would form an intelligent idea of the result of the act to which they are giving their consent. The less their age, the greater is the probability of their consenting on the holding out of inducements, or on the mere excitement of sexual desire in them by external influences. When they have become older, they come to know (especially if they are members of a well regulated normal family) the nature of the act as well as the consequences of their going astray; and so the fear induced by those consequences keeps them back from giving their consent readily. In the law as it was administered prior to 1925, the great point that was sought to be brought out in a rape case was that the girl was over 12 years of age; and as soon as this could be done, any circumstance that could be urged to show her consent even by implication was relied on in support of the plea of consent. If the age of consent is raised, people who go astray will know that the consent of the girl means nothing; and so if they indulge in the act, they should be prepared for the consequences thereof. In their case, the only question for decision would be whether they did the act or not. This thing is not so difficult to prove, as the other question of consent. If the age of consent is raised to 16, it is to be expected that most of the girls would be not only married by that time but the consummation of marriage would also have taken place. So in the majority of cases, it is to be expected that the girls would remain free from inducement of going astray if the age of consent (in the case of persons other than husbands) is raised to 16. This is from the point view of society. So far as the medical point of view is concerned, I think that the same is the case. I believe that the girl attains full development at or about the age of 18. If she undergoes sexual intercourse before that time, her development is arrested. She may go on developing even after she has been subjected to intercourse, but it is not as good and as full as it was before. If she happens to conceive before she is 18, her development is altogether stopped. Whatever tendency she has towards development is diverted either towards nourishing the progeny or is absorbed by the cares attendant on motherhood. I therefore think that the longer a girl remains free from intercourse upto the age of 18, the better for her as well as her progeny. In the present state of society, however, (even in the western parts), very few girls are allowed to remain unmarried upto the age of 18. The sentiment of the majority of the people is against it. Even if the parents or guardians are willing to go upto that age, they are pestered with reference to this question by their relations as well as friends; and so in nearly all cases, they have to bow down to the will of the latter and to perform the marriage early, sometimes with an undesirable person or family. Sometimes a stray case of an unmarried girl of 14 or 15 going wrong occurs; and this makes the position of the parents or guardians of the girl still more worse. In these circumstances, it would not be proper to lay down that the marriage of the girls should be postponed to 18 years. I think that having regard to the prevailing conditions, the marriage age should in no case be lower than 14. If it be possible, it may well be raised to 15. If this is done, the consummation of marriage in all those families where the *Gaona* ceremony is usually performed will generally happen in the 16th year. In any event, it will not take place before the 14th year. This will afford some safeguard at

least to the girl as well as her progeny. As time goes on and the general public realises the practical benefit of the good health of the girls as also the decrease in death in their case and their children, it will be ready to accept legislation to the further raising of the marriage age. The majority of the people in the western parts would not object to my proposals. The residents of the eastern parts would object, but there can be no advance unless some sort of pressure is put upon them. It may be gradual, but it has to be put.

The above has been written on the assumption of a normal marriage and followed generally by *Gaona*. There is another class of cases found mostly in the eastern parts, where a girl of tender age is practically sold to the would-be husband. As soon as the bargain is completed, she is sent to the latter's place. She remains there till he thinks that she is fit for marital duties, when she is taken back to the father's place and her marriage performed. After this, she returns to her husband's place and is subjected to intercourse. This sort of thing should be altogether stopped. In these cases, the girl is always at the mercy of the person who has bought her. The disparity of ages in them is almost always great. I have seen a girl of 6 or 7 or 8 with a man of 30, 35 or even 40. Their physical development presents a remarkable contrast. In the case of these girls, it is hardly likely that the man would allow them to remain free beyond 13. They are in fact bought upon the belief that they have to be ready for the marital duties as early as they can. In most cases, I am sure they suffer physical injury and deterioration; but the thing is never noticed, as such cases never come to court.

3. The cases of rape are not on the increase in the parts I have been. On the contrary there is just a tendency towards the decrease. The cases of rape that come before the courts here are mostly of tender girls and young men between the 16 and 24. There are few cases of fully adult females and males. Compared to the cases of rape, the crime under section 366, Indian Penal Code, is on the increase. The western parts of U. P. are near the Punjab, where it is said that young females of any caste can be readily disposed of for a sufficiently high consideration. The females concerned in these cases are generally married girls, but a few cases relate to unmarried girls as well.

I cannot say if the amendment of the law in 1925 has in any way reduced the crimes of rape and seduction. I do not think that any change in the law beyond raising the age of consent is required. What is wanted is an improvement in the Agency which investigates such cases and which brings to book the offenders in these cases. If the preliminary steps that are taken in such cases are well directed and there is no swerving from the right course in the initial stages, there is a greater likelihood of the offender being ultimately punished. But if there has been something wrong in the initial stages, the cases often miscarry.

4. I am not in a position to give any opinion on the points involved in this question. I have already put down that in these parts, the marriage age is higher in all classes, and so there are few cases of intercourse by husbands with wives below 13 years of age. When a man can get a girl of 16 or even 17 years of age, it is not likely that he would marry a girl of 12 or 13 years. Some cases of the latter kind do occur; but the effects of early consummation do not come to light. Relations and friends may come to know of these effects, especially where the girl or her progeny has suffered; but the thing is not talked about, especially in respectable quarters.

I cannot suggest any practical steps to make the law effective in such cases. The law should, however, be laid down to this effect, and that too in no uncertain terms. So that any party or even a relation, who wants to avoid this thing, may be in a position to enforce his wishes in the matter. In the absence of the law, even the parents are sometimes helpless. They know that their child is likely to suffer or has suffered, but they cannot effectively intervene. Some guardians at least would take advantage of the law on this point, if it is there. It is after all upon them that the whole thing depends; and they have to be educated in this matter both by fear of the law as well as social reform.

5. The girls generally attain puberty between the ages of 13 and 15. If the family is well regulated and the girl herself is healthy in thought and body, the probability is that she will attain puberty at a higher age. If the conditions are otherwise, she will do so earlier. Physically weak girls attain puberty much later.

I cannot say if girls attain puberty early or late in any particular caste, community or class of society.

6. I am not in a position to give definite information on the points involved in this question, as these cases never come to court. My information is that cohabitation takes place generally after marriage, when the *Gaona* has been performed. As said above, marriage is delayed in these parts; and the *Gaona* is performed within a year of the marriage, or after 3 or 5 or even 7 years, according to the exigencies of the situation or the will of the parties.

7. So far as I know, the early consummation of marriage is not insisted upon in any part of these Provinces on the ground of any religious injunction. In fact, it would be inconsistent with the late performance of the *Gaona* owing to the immature age of the girl at the time of her marriage.

I cannot give any answer to the 2nd part of this question.

8. I have put down above the fact that *Gaona* is generally performed, as also the time when it follows the marriage. In some parts, the *Gaona* and the marriage ceremonies are combined. This enables the wife to go to the husband's place at all times, whenever desired, without any kind of hinderance or obstruction. In some classes, the custom is that after the marriage, the wife would not go to the house of the husband until the performance of the *Gaona*, unless some such thing as death at that place has taken place.

The *Gaona* generally coincides with consummation of marriage. In fact, it is performed for that very purpose. Among some lower castes, where the girl has been married at the age of 5 or 6, one or two other ceremonies known as *round* or *chālā* are also undergone; and it is after the performance of either or both of these ceremonies that the consummation takes place. All these ceremonies are performed with reference to the time when according to both the parties, the girl is considered fit for consummation. In some cases, it may happen that the girl at that time is only 13.

The *Gaona* is generally performed after the attainment of puberty. In some cases, it is performed before that time as well.

9. I have put down above that the development of a girl goes on even after she has attained puberty, specially where the latter has come about at rather an early age. I have also put down that the consummation is to be delayed as far as may be possible; but in the present circumstances consummation may be permitted after the age of 15 or 16, or at the latest after 14. I am not in a position to state the period that should elapse between the attainment of puberty and the consummation of marriage. I can, however, say that the greater the age of the girl at the time of consummation, the less likelihood there is of injury to herself and her progeny.

10. I think that the age of 16, or at least 15, is the age when a girl can give an intelligent consent to cohabitation with due regard to consequences.

11. I have come across several cases in which early consummation resulted in injury to the girl or her progeny. I can cite the case of my own daughter, in whose case consummation took place soon after she had attained puberty. Her genitals were injured, and so she could not conceive for some time to come. When she did conceive after undergoing some treatment, she had a mis-carriage, which ultimately resulted in her death as also of the child she prematurely bore. From the time of the consummation, her general health did not improve; and after her *Gaona* it gradually declined. I remember two other cases of girls of tender age having marital intercourse with fully developed husbands of over 25. In one case, the girl became a mother before she had attained the age of 13. After that, she was a physical wreck and her baby mere bones and skins. She felt so miserable at her



husband's place that she ran away from it, and even left her baby there. When caught and asked to go back, she was unwilling to return. In the other case, the girl died in giving birth of her first child who also perished. This girl had attained the age of about 13 years when she was confined. Both were of low castes, among whom the physical strength is said to be better developed than among the middle classes. I have come across other cases, but I cannot recall details of them. On the other hand, I have seen others fully developed and of full age, bearing children which won prizes at Baby Shows.

12. In my opinion, early consummation and early maternity is responsible for the major portion of maternal and infantile mortality, as also for low physique and poor development of both mind and body both in the mother and the child. Other factors also contribute to this result; but where the mother's vitality is low and she herself requires rest and recoupment, it is not to be expected that her system would for any length of time bear the strain of child-bearing, or that her progeny would be healthy and strong. Nor can she endow her progeny with the requisite physical and mental qualifications.

13. In the part of the country where I have been living and working, there is a feeling that the age of marriage should be raised. I, however, cannot say if it is due to the enactment of the Act of 1925 or to the activity of the social reformers. I believe that it is mostly due to the latter. The feeling is general among the thinking people. Among the poor classes, the economic question also comes into play. As a rule, people do not want to be burdened with a child whom they would have to maintain and bring up for a number of years. When a daughter-in-law of tender age is sent for in her husband's family and made to live permanently, she is expected to bear a fair share of the burden of the family work, either inside the house or outside it. In some cases, it is the chief motive for her being sent for.

14. No.

15. The determination of the age of girl on the border line of the age of consent is always a question in cases under sections 366, 375 and 376, Indian Penal Code. I have seen cases in which contradictory evidence has been given by medical men as to the age of the girl. The registration of the birth of girls is the only remedy that I can think of to minimize these difficulties. This registration prevails both in the cities and villages of the United Provinces, but the manner in which it is done is so defective, at least as far as the villages are concerned, that very little reliance can be placed on the registration record. In all the places where Municipalities exist, the reporting of births is made by the sweeper attached to a house. He does not do this work in a responsible manner. Further, the details that are given are not full. The result is that when the entry becomes the subject of a dispute, it is always possible to find loopholes on the basis of which the evidential value of the entry becomes doubtful. If the reporting agency is improved, and the details are fully given, the entry will become much more useful. If the work of reporting instead of being given to sweepers is given to a responsible official, specially employed for the purpose, it will be much better done. The reporter as well as the person who makes the entry should be compelled to write down full details, so that it may be possible to identify the child with exactitude with the help of the particulars given without any extraneous help from any person or paper. There should be an agency to check the entries every now and then. It should not be considered that the filling up and reporting of these things is merely a formality which has to be done somehow; and that if it is not properly done, it matters little. In places where there is no Municipality, the clerk of the Notified Area Committee or the clerk of the village *Panchayat* or any other court or Committee existing at the place, should usually be the person employed to record the entries. The *Mukhia* or the *lambardar* or any other responsible person should be the reporting agency. One of these persons should be made to report as well as to write out the entries in places where no clerk of a committee is available. The details in the entries are to be as full as possible. Weekly or monthly copies of the entries are to be sent over to the Headquarters of the District, where they are to be copied in special registers kept for the purpose. The entries in these registers as well as

in the original registers are to be checked every now and then by a competent and reliable person, so that mistakes and shortcomings may be detected and removed. Investigating officers should be directed that in all cases where the question of age is likely to come up, he should from the outset consult these entries and put their copies on the record. He should also try to collect other independent evidence on this point. This thing is ignored in fact at present ; and it is left to be brought out in the course of the trial as a matter of course.

16. I think that if the age of consent is raised to 14 or above, the difficulty of determining the age of the girl would to some extent be minimized. In case of most of the girls, it is difficult to say if she is 12 or 12½ or 13 years of age, but it is easier to say that she is not 14 or above. In normal girls, certain developments take place at the age of 14 or above ; and their absence can in most cases be fairly taken to show that she has not reached that age.

17. I would separate marital and extra-marital offences into two classes. Each class has I think further to be sub-divided in two heads. In marital cases, there is the class of advanced and fully developed husbands, who deliberately have intercourse with girls of immature age on the assumption that they are entitled to deal with their wives as they please ; and if anything wrong happens to her, it matters little. The wife and her guardians may be totally against the thing, but they go on with it. The other class is of boy and girl husbands and wives. These persons are seldom themselves to blame. There are some parents and guardians (at least of boys) who think themselves very happy if they are able to bring about such union of persons under their charge. The latter class of cases is becoming rarer, but I believe that they do exist still. In the former class of cases, the punishment should be severe and deterrent, proportioned to the injury caused. In no case should it be less than two years. In the latter class, the punishment should be as light as may be possible, as the offender is practically blameless in the matter. In fact, the person in charge of him is the real offender ; and he too should be punished according to the nature of the injury caused. The injuries in such cases may be expected to be not serious ; and so punishment up to two years should be sufficient in such cases.

The same sub-division comes out in extra-marital offences. The first kind of cases is that of persons who are fully developed and who are determined to gratify their passion irrespective of the injury they cause. In their case, the present scale of punishment should continue, combined with whipping. If they have been able to obtain the consent of the girl, it should not be considered a palliative in determining their punishment. The other class of cases is what are commonly termed boy and girl affairs. In these cases, the girl is generally a willing party. In such cases, the punishment of whipping proportioned to the age of the boy as well as to the injury caused by him should be enough.

18. I had not to deal with a case of this kind within the marital state, and so I cannot say what special procedure is required in such a case. As regards the ordinary rape cases, the present procedure is sufficient.

19. The personal element is the chief factor in such a case. The more reliable and tactful the investigating officer is in such cases, the greater is the likelihood that collusion to protect the offender or improper prosecution or extortion would be avoided. In all such cases within the marital state, the investigating officer should be of as high a rank as is possible. He should also be fully competent in and conversant with his work. He shall not only have to deal with persons of some position, but he shall have to face opposition from all sides ; and a determined attempt will also be made to suppress the evidence. The enquiring Magistrate should also be of the same status and experience. He may not only be firm, but also highly conciliating and tactful. Otherwise such cases are likely to fall through.

20. I think that penal legislation fixing a higher age of consent will be more effective than merely fixing the minimum age of marriage. In the case of persons who are disposed to go along the lines laid down by the law, the latter course is

sufficient to induce them to act properly. They would rely upon it to give expression to their own views in the matter. There are, however, persons who are not prepared to act according to the law; and who will deliberately set it at naught, if they can do so with impunity. In their case, penal legislation is required. If the law is going to be enacted to this effect, people should feel that they have to obey it, and that disobedience to it involves painful consequences. I believe that the majority of people would not seriously object to the penal legislation. It is true that people generally do not like that their domestic matters should be intruded upon by the law; but in this particular matter, which affects the well-being of their children and towards which the majority of them are well inclined, they would not resent this interference.

21. I would rely on both the means. Social reform by means of education and social propaganda is very good and very desirable. But it takes a very long time in bringing about a change, unless it is backed up by penal legislation. The latter affects only the irreconcilables; but the latter are soon reconciled to it, when they perceive its good effects in the case of others as well as in their own.

**Written Statement, dated the 10th August 1928, of Mr. LAKSHMI SANKAR, Deputy Collector, Balundshaher.**

1. No dissatisfaction exists with regard to the age of consent contained in Sections 375 and 376, I. P. C.

2. An advance in the direction of raising the age of consent is more desirable. It will produce more salutary effect and is better suited for the well-being of the public.

3. Cases of seduction and rape are frequent but owing to disgrace it involves on the family of the girl many cases do not come frequently in courts.

The amendment of the law in 1925 did not succeed in reducing the number of crimes. It probably did succeed partially. I would suggest that in the case of wives the age of consent be raised to 14 and in all other cases beyond marital state to 16 years.

4. I cannot say very few cases of rape against husbands have come to my notice or knowledge. In cases of minor wives the consummation of marriage is generally postponed till the girl attains puberty.

In Indian community the marriage of a girl is considered to be a heavy objection and it often happens that aged fathers are in a hurry to discharge that obligation, lest they would die leaving a burden on the shoulders of others. Moreover orthodox parents in Hindu community consider marriages of girls before puberty a good act. For these reasons I do not think that marriages of girls beyond 13 years of age can be postponed. In Bengal, Bihar and Benares where orthodox element is holding its own on Hindu community. English education has practically succeeded in stimulating public opinion in this direction but the time is still far off, when Hindus by themselves can put off marriages beyond 13. The only alternative left is to postpone the consummation of marriage till after the attainment of puberty and this course is generally adopted by English-educated Hindus of orthodox type.

5. The girls generally attain puberty at about 13 years of age in Bengal, Bihar and between 14 and 15 years in western districts of U. P. in well-to-do circle but in poorer circles where sufficient diet is not available, the attainment of puberty may be delayed about a year. It has nothing to do with castes, but it depends on the society, climate or atmosphere in which girls are placed.

6. (1) Cohabitation is not common before puberty.

(2) Yes, soon after puberty.

(3) Not before 13 years.

One case of rape had come to court in which it was discovered that a girl aged nine or ten had cohabited several times before.

7. There is a belief that some religious injunction exists to marry a girl before she attains puberty but there is certainly no religious injunction for consummation of marriage before puberty. I am talking of Hindus only. No penalty is provided for breach of these conditions. But this religious injunction is seldom acted upon.

8. Gaona usually takes place in the U. P. and the consummation of marriage usually coincides with it. This ceremony is performed within one or three years from the date of the marriage. But girls are allowed to go to their husbands after marriages where Gaona do not take place.

9. No. I do not consider that attainment of puberty is sufficient indication of fitness for consummation of marriage. I think 16 years is suitable for consummation of marriage in western parts of U. P. and 15 years in Bengal and Behar or two years after the attainment of puberty.

10. 15 years in Bengal and Bihar. 16 years in Western districts of U. P.

11. Cohabitation before puberty is certainly injurious to the health of the girl and her progeny. No such case has come to court except cases of rape in which injuries were serious to the vital parts of the body of the female. I know a case in which the husband was 18 years old and his wife was only 11 years old. Cohabitation ruined her health and she died an early death. Her legs were contracted and she could not move about before her death.

12. Yes.

13. No.

14. Yes, specially in those cases in which the child is likely to inherit large estate or where the father is comparatively old, but ordinarily this is not the case.

15. Yes. I had a case before me in the district of Azamgarh in which the Civil Surgeon stated that the girl was about 13 years old and the parents stated that she was nine years old. I recorded the evidence of parents which seemed to me correct and I committed the accused to the court of sessions who agreed with me and convicted the accused. When the case went up in appeal to the Allahabad High Court the girl was called. I think a public record of the ages of all children should be maintained.

16. Yes.

17. Yes. Separate extra marital and marital offences should be noted in Indian Penal Code. The maximum punishment for offences within marital circles should be 2 years. In some cases within marital cases mere fine should suffice.

18. The difference in procedure is essential. In cases beyond marital state Sessions Judge will have jurisdiction and the procedure laid down for sessions cases would be followed. In cases of rape within marital state Magistrates, I class, should try.

19. Nil.

20. I think both methods be acted upon. Higher age of consent would be preferable as it is more in consonance with the public opinion.

21. It is necessary to strengthen the law. But social side should not be lost sight of.

**Written Statement, dated the 23rd August 1928, of Rai Bahadur RAM SARUP, O.B.E., Chairman, District Board, Pillibhit.**

1 and 2. Yes, there is a very great dissatisfaction with the state of the Law, relating to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

It has been noticed that a large number of girls below the age of 16 are often brought into sexual relations with men :—

- (1) Sometimes by selfish parents ;
- (2) Sometimes by negligent relatives ;
- (3) Sometimes by miscreant bad characters ; and
- (4) Sometimes by immoral women friends.

Prostitutes in this country have been found to sell the person of their daughters and proteges for prostitution at a very early age, if they saw that such a course would bring them an unusually large sum of money.

It must be admitted that a girl below sixteen is too ignorant and too inexperienced to know generally what evil effects her consent to sexual intercourse in early years will bring about and for this, illiteracy and Indian social customs are mainly responsible.

An inexperienced and ignorant girl having little to do at home to keep her mind busy with healthy pursuits, falls very easily a prey to the sexual proposals that are made to her, directly or indirectly. Men having no fear of law can very well afford to make such proposals and victimize poor, innocent girls who have no knowledge of what the result of all this would be.

Where parents are negligent and indifferent as to the movements of their girls, such cases can be seen in large numbers. The evil effects of sexual relations being started much too early, are common among some class of hill people and some of depressed classes of the plains.

These require to be put down with a strong hand by introducing the amendment proposed by Sir H. S. Gour.

3. Yes, instances of seductions and rape are very frequent in this part of the country.

So far as I am aware, raising of the age of consent to 14 years has helped a good deal in reducing the cases of seduction and rape, but reduction noticed is not satisfactory or sufficient.

I would suggest that in order to make the law effective and to reduce the cases of seduction and rape to the minimum, the law should provide some punishment to the girls as well and to the men found guilty of immoral connections both before reaching the age of consent and after it.

4. There is no doubt that conditions as exist today are far better than what they used to be in 1925. Public opinion is growing in favour of marrying the girls about the age of 15. I am not quite sure if this is the result of the law which raised the age of consent within the marital state to 13 years, or it is due to the growth of education and experiences of evil results of early marriages. I am however inclined to believe that the amendment of the law as made in 1925 has something to do with the progress noticeable today.

In my opinion the best course to bring about satisfactory results would be to pass Mr. Sarda's bill without the least possible delay.

5. Girls generally attain puberty at the age of 16 in the United Provinces. I might mention here that I do not take the beginning of menstruation and swelling of breasts as signs of puberty. These symptoms often appear at the age of 14. I consider that about 2 years must elapse after the first appearance of the monthly course, before a girl is allowed to indulge in sexual intercourse ; for unless this is arranged a girl's internal parts that are affected during an intercourse and such parts as are affected by conception are bound to receive shocks that bring about very harmful results such as Leucorrhœa, Dysmenorrhœa, and abortions, etc., that are so common among the young women these days, are the results of the negligence in this matter.

Yes, the age of puberty differs in different castes and communities, so far as I know. Those girls who have occasion to hear immoral stories and see sexual intercourses among birds and animals attain puberty earlier than others.

6. Yes, before puberty, soon after puberty and even before girls complete 13 years, generally among the low class people.

7. I do not think that the practice mentioned in (6) above is so much due to religious injunction as to superstition and ignorance.

Rishi Pathenashi is said to have laid down in old books that a girl should be given in marriage before her breasts swell and if this not done, the parents or her guardians, who neglect this, are born insects in ordure in next birth. But this injunction has not much to do with the present customs of early marriages. The Indian mentality is very much conservative would not give up old customs and practices easily.

8. Yes, Gauna ceremony is always performed in the United Provinces. Gauna ceremony is generally performed three years after marriage. In cases where girls are very young, the ceremony is sometimes postponed to five years after marriage, but it is never the rule that Gauna should be performed only when the girl has attained puberty.

9. Please refer to reply No. 5.

10. At 16 at the earliest.

11. I know of the following cases :—

(i) A girl was given in marriage at the age of 15. She was quite healthy before marriage but after two months' stay with her husband, she developed Phthisis and succumbed to it. I believe that her death was due to nervous exhaustion.

(ii) A girl who was about 14, had a very excellent health before marriage. She was married at about 14 years and 6 months, and began to reduce in health within six months. She suffered from Leucorrhœa and had repeated abortions for over 10 years. After long and continuous treatment, she gave birth to a sound child, but it was very weak and thin and died very early. After that there have been three more deliveries, but all the babies died within two years.

(iii) I know of a number of cases in which girls who were married before reaching the age of sixteen have in most cases suffered from Leucorrhœa, kept very indifferent health and given birth to very weak children.

12. Yes.

13. Yes, there has been a development in public opinion. But it is generally confined to educated classes.

14. Yes, they do, not because they have a very good experience of early consummation of marriage but because women are generally more conservative than men and because Indian social customs exercise a persuasive effect on their mind.

15. I am not aware of this fully, but there are some difficulties.

16. I think so, but I am not sure.

17. I would not separate the two cases into different offences. I consider that sexual connection with a girl by a husband, before the girl is physically fit for the purpose is as bad as that by a stranger, rather worse, because intercourses with husbands are more frequent and of far-reaching effect than those with strangers. A girl cannot mix with strangers as freely as she does with her husband.

18. I would make no difference.

19. Yes, I would suggest better arrangement for registration of births and introduction of the system of age certificates to be filed by parents and guardians before marriage, in the Magistrate's court.

20. In my opinion legislation fixing the minimum age of marriage would be more successful than raising the age of consent for marital cases. The latter course would give rise to falsehoods in the matter of age of girls by parents and guardians. Boys' parents are often very anxious to get their daughters-in-law at their houses,

as early after marriage as possible. Girls' parents cannot generally afford to displease them. The result would be that they would generally agree to take resort to falsehoods in respect of the age of girls rather than displease the boys' guardians.

The public would I think welcome legislation of fixing the age of girls for marriage, more than raising the age of consent.

21. Personally I would prefer adoption of educative propaganda to penal laws. But I think for conservative minds of Indians penal laws would be more effective and would give early and better results than propaganda. Besides that propaganda is bound to be slack and uninteresting.

**Written Statement, dated the 20th August 1928, of Rai Bahadur Dr.  
B. N. VYAS, Head of the Department of Materia Medica, King George's  
Medical College, Lucknow.**

1. There is dissatisfaction with the state of law as to age of consent among the advanced section of educated India and among the educated women.

2. Circumstances justifying an advance on the present law relating to age of consent :—

- (1) The desire on the part of educated section of our country men and women for such an advance.
- (2) Deterioration of health among young men and women.
- (3) Appalling infant mortality in the country due partly to early marriage with which the question of age of consent is closely associated.
- (4) Hindrance to education of boys and girls among the higher classes and to efficient labour among the labouring classes.

3. Crimes of rape and seduction for immoral purposes are not more frequent in these provinces than in any other province of India so far as my knowledge goes.

I have no personal knowledge whether in 1925 amendment of the law was led to decrease in the crimes of rape and seduction. But it seems reasonable to believe that raising of the age of consent to 16 years may eventually lead to reduction of such crimes.

4. I do not think that the amendment of 1925 has made much difference. Whatever improvement has taken place is due to increase in education.

The remedy lies in the same direction, namely, increase of facilities of education of boys and girls at the same time raising of age of consent to proposed limit is more likely to be successful in protecting girls.

5. In these provinces the usual age at which girls attain puberty is about 14.

Girls among the well-to-do classes attain the age of puberty earlier than among the poorer class.

6. Cohabitation, so far as I know, is usual in these provinces soon after the girl has attained the age of puberty.

Very few cases so far as I know come to Court.

7. Early consummation where it exists is due to custom and tradition based on religious injunction.

8. Gaona is very common in these provinces. Garbadhan ceremony is gradually dying out among the higher classes. Gaona ceremony is generally coincident with attainment of puberty.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation. I consider that at the age of 18 a girl may be considered to have attained sufficient physical maturity to justify consummation without injury to her health and that of her progeny.

10. After 16 a girl is likely to be competent to give an intelligent consent to cohabitation with due realization of consequences. But this depends greatly with environments and the education she has received.

11. During my professional experience I have come across numberless cases in which advent of motherhood before attaining full maternity has resulted in very seriously effecting her health and also that of her progeny. A good many cases of tuberculosis among young women are traceable to early married life and subsequent pregnancy. Mortality among infants and puny growth of children are traceable to same cause. Records of any large Hospital can supply needed statistics.

12. Early consummation and early maternity is responsible both for high maternal mortality and infant mortality. These conditions are responsible to great extent for the very poor physical development of boys and girls.

13. Majority of educated men and women have been demanding increase in age of consent both in marital and extra-marital cases in these provinces.

14. Women among the higher class do not favour early consummation.

15. It is much more difficult to determine the girl's age in the 13th year than between the ages of 14 and 16.

I suggest registration of births in the rural areas to minimise the difficulty about the determination of age.

16. The difficulty or margin of error in determining the age will be materially minimised if the age of consent is raised to 14 years or above.

18. The offences within the marital state may be dealt with in camera. There should be no publicity in trial of such offences.

20. Fixing the minimum age of marriage by law will be much more effective than legislating about the age of consent.

It is probable that the orthodox opinion in these provinces may be opposed to fixing marriage age by law.

21. Social propaganda has proved quite ineffective in preventing the early consummation and its evil consequences. Increase in facilities for education of girls with strengthening of the law would seem the most likely means to secure the object.

**Written Statement, dated the 29th August 1928, of K. B. M. SHAFI,  
Deputy Commissioner, Bara Banki.**

1. There is no dissatisfaction with the state of the Law as to the age of consent as contained in sections 375 and 376, I. P. C., except that what is usually called the intelligentsia of India and the men of the new school of thought desire to raise the age of consent from 14 to 16 years in cases of girls whether within marital state or outside if they are seduced or ravished by persons other than their husbands. As regards the masses they are absolutely ignorant of the age of consent as contained in sections 375 and 376, I. P. C.

2. (1) and (2) The only circumstance which in my humble opinion justifies retaining the Law of age of consent as it is that girls in a marital state if they are subjected to sexual intercourse by their husbands are reluctant to disclose the fact to any one and if it is some how or other disclosed to support the conviction of their husbands. Any legislative measure in introducing the reform will practically remain a dead letter owing to the backwardness of the girls in general in this country. Cases can also be imagined where even the parents of a girl of the age of 13 or 14 are anxious to get the girl married and enjoy the blessings of having grand-children.



For instance take an old pair having a girl of 13 with no one except her parents to look after her welfare the parents are fairly well-off and they are anxious naturally to see their daughter settled in marital state, they are naturally anxious that the girl should have children from her husband so that her hold on her husband may become permanent. Such parents if they come to know that their girl of 13 years had been subjected by her husband to sexual intercourse will not by any means either like the fact to be disclosed or help in running in their son-in-law. On the other hand it appears desirable to make an advance on the present law in the matter of raising the age of consent for the purposes of sections 375 and 376, I. P. C. on the bare ground that it will not only improve the health of their mothers and their children but will also effectively reduce maternal and infantile mortality.

3. I am not prepared to say that the crimes of seduction and rape are very frequent in this part of the country. All the same they are of the most heinous nature and any measures to mitigate the evil must receive hearty approbation of the society. I do not think that we are in a position to say that the amendment of the law made in 1925 has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. In my opinion the only effective way to make the law effective is to prohibit the marriage of girls up to a certain age. In other words Mr. Sarda's Bill and this question should go hand in hand.

4. The answer is no. The state of girls within the marital state has not improved at all. I do not think that the illiterate masses have postponed the consummation of marriage or that it has stimulated public opinion in that direction and I have no doubt that it has not led to put off marriage beyond 13 years. As already expressed above the remedy lies in the prohibition of the child marriage which is the root cause of all the evils.

5. This is a question which should be answered by a Medical Officer. Experience has shown that girls who enjoy a healthy life whether they belong to high or low class of people and get wholesome food attain the age of puberty at the age of 12 or 13, others from 13 to 16. The whole thing depends on the health of the individual concerned.

6. Among the lower classes cohabitation by their husbands with married girls of tender age is very common. Sometimes girls of 11 or 12 years even before the attaining of puberty are subjected to sexual intercourse by their husbands and it is the most common thing that they are cohabited just when they attain the age of puberty or soon after it. Among low castes cohabitation with girls below 13 is not looked down in society but such cases never come to court for the simple reason that both the girl and the parents of the boy or the girl in whose house the sexual intercourse has taken place are reluctant to expose the husband of the girl. Their *patti bhagii* makes them prefer even death to the betrayal of their Lord.

7. As a Muhammadan I can speak on behalf of Muslims only and as such I do not think the practice of early consummation of marriage at or before puberty is warranted by any religious injunction. I am not prepared to say definitely what the Hindu religion teaches but I am told that a married girl after 12 years of age is ripe for cohabitation as they say she had passed through 12 girahas or 12 stars.

8. Gauna ceremony usually takes place after a girl attains the age of puberty but there are cases on account of the peculiar state of the family where it takes place much earlier. It is very difficult to say how soon after the age of puberty is attained a gauna ceremony is performed.

9. As I have said somewhere above the mere attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage but if physical development will have to be taken into consideration there will be cases in which even a sickly girl of 20 years will not be physically matured for sexual intercourse. Generally I think the attainment of puberty is a sign of physical maturity especially in a tropical country like India. A consideration of this point will compel us to fall back on the individual health of the girl which consideration I do not think practicable for legislative purposes.

10. This question is very difficult to reply. It entirely depends on the individual girl's consent. Usually at the age of 15 or 16 a girl is considered to be intelligent enough to give consent for cohabitation with a due realization of consequences but there may be girls of immature intelligence even at the age of 18 who cannot give such consent.

11. I cannot reply this question with reference to my personal experience.

12. My reply is in the affirmative. I have seen cases in which girls who had attained puberty but were not physically mature for cohabitation suffered extensively by sexual intercourse with their husbands and some of them died. The children born under these circumstances very seldom survive and if they do they are weak both mentally and physically.

13. Yes. There has been some development of the public opinion in favour of the extension of the age since the passing of the amendment Act of 1925 but this progress is noticeable only among the educated classes.

14. As a matter of fact women in this part of the country are quite indifferent about the consummation of marriage for their children because the common belief is that consummation must follow marriage.

15. No particular difficulties have been experienced in finding out the age of girls in cases under sections 375 and 376, I. P. C., because the opinion of the medical man in the matter of age outweighs every other kind of evidence. In my opinion the same state of affairs will continue if the age is further raised, except for the evidence of the expert it is very difficult to ascertain the exact age of a girl.

16. No. It will remain the same as it is.

17. No. I would like to keep the extra-marital and marital offences as the same offence but prescribe a less severe sentence in the case of the husbands.

18. No, the offences being the same as gone in question 17. The procedure should be the same. The offence should remain triable exclusively by the court of sessions and no difference in procedure need be adopted.

19. I do not think any safeguards are necessary beyond the existing ones.

20. I do not think so, the legislation fixing the minimum age of marriage would be in consonance with the public opinion in this part of the country. The Brahmans however would consider it a serious encroachment upon their religious freedom but their objection seems immaterial.

21. I would prefer to secure the object in view by the progress of social reform by means of education and social propaganda than the strengthening of the penal law.

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**Written Statement, dated the 23rd August 1928, of R. B. Babu VIKRAMAJIT SINGH, B.A., LL.B., M.L.C., Advocate, Chairman, Municipal Board, Cawnpore.**

With reference to your circular letter No. 42 ACC, dated the 26th July 1928, I have the honour to say that in my opinion the age for consummation of marriage for girls should be 13 and boys 16. In case of boys I can go even as far as 18.

**Written Statement, dated Nil, of Mr. ANJANI SAHAI, Secretary, Arya Samaj, Lakhimpur-Kheri.**

1. Yes, dissatisfaction with the present law of consent certainly exists.

2. The present age of consent should be changed, for the following among other reasons :—

- (1) It increases infant mortality.
- (2) It increases disease.
- (3) It prevents education.

3. Crimes of seduction and rape are frequent. The raising of the age of consent has to a certain extent succeeded in reducing cases of rape outside marital state. In so far as the law has been made applicable to married women, not much use has been made of it and the reason for this has been that wide publicity has not been given of the new changes of law in the subject.

4. The amendment of 1925 has improved the situation by stimulating public opinion and putting off marriages beyond but to a very small extent. The parents of persons taking 'Kanyadu' should also be punished as abettors.

5. Girls generally attain puberty after 14 and in rare cases before it. This is the case in every community.

6. Yes in some classes it is common. Such cases never come to court.

7. Religious injunction have much to do for this miserable condition.

8. The ceremony of Gaona is certainly performed even now but the restrictions that were attached to this ceremony are not observed. Even educated families sometimes allow the newly married couple to live together and consummation follows as a matter of course.

9. The attainment of puberty is not always a sufficient indication of physical maturity to justify consummation of marriage. In my opinion at least 3 years should pass after menstruation when the girl should be subjected to consummation.

10. Generally at the age of 16.

11. Yes but details cannot be given without consulting the records of judicial cases in courts.

12. Yes.

13. Public opinion certainly favours an extension of the age of consent in marital and extra-marital cases. Public opinion is generally growing in favour of extension but on account of illiteracy and ignorance in the masses, such opinions do not find expression outside the few educated people who live in towns.

14. No, the new generation of women do not want early marriages of their children excepting of course the old aged ladies who have a false sentiment of securing their grand-children married during their life-time.

15. Doctors are mostly responsible for a large number of failure of cases under sections 375 and 376. Their statements on the point of age create doubts and courts are prone to attach too much importance to the opinion of experts. One of the measures that can be suggested to remedy this miscarriage of justice is that in such cases girls should invariably be examined by lady doctors who should be cross-examined not in open court but by means of cross interrogatives if they hesitate to be examined in open court.

16. The margin of error would be materially reduced if the age-limit is extended to 15.

17. Yes for at least ten years they should be kept separate. The proposed addition of section 376-A would be sufficient for the purpose at present.

18. The case relating to marital offences should be held in camera.

19. In cases of offences within marital state the prosecution should be sanctioned by 1st class magistrate.

20. The minimum age should be fixed.

21. Education and social propaganda are not sufficient to cope with the evil. Penal law should be strengthened even at the risk of facing some opposition from orthodox quarters.

**Written Statement, dated the 14th August 1928, of Lieut. Rai Thakur  
PATI RAM BAHADUR, O.B.E., I.M.D., Chairman, District Board,  
Garhwal.**

1. As far as I know there has been no dissatisfaction with the state of the law as to the age of consent in District Garhwal because the actual consummation of marriage is practised after the age given in law enforce; although marriage is performed in very early age. Garhwal being a district of temperate climate, girls do not menstruate before the age of 14 and hence the age of consummation of marriage is religiously forbidden before it. Secondly the girls in this district before they attain the age of 13 or 14 remain stunted and totally unfit to cohabit with their husbands.

2. (i) I do not consider any necessity to make or alter an advance on the present law of the age of consent as the country usages and tenets of the religious scriptures observed by the inhabitants of this country coincide with the law enforce.

3. Seductions or rape are very rare in this district.

4. On the reasons given below I am of opinion that the age for marriage of girls if extended beyond 13 years of age would be more beneficial to the couples; as Hindu religious tenets also have given injunctions not to marry girls before the age of 16 years. Should marriage be put off beyond the age of 14, it would improve the physical state of girls and may be more fit to bear progeny after that age.

5. The usual age at which girls attain puberty in our district (Garhwal) is 15 or 16, excepting in cold localities, it is observed that the girls come to puberty a year or two later.

6. (ii) Puberty is observed as a sheet-anchor in this district among all classes of people for cohabitation.

7. No. Religious injunctions distinctly point out that consummation of marriage is to be enjoyed when the girls come to puberty and not before this in any way.

8. Gaona (Garbhadan) ceremony in our district is usually performed according to religious rites but it differs a good deal from that of carried on in the plains. In Garhwal Garbhadan is performed in the anterior to the consummation of marriage, i.e., a few days after marriage but actual consummation of marriage only take place when the physical state of girl justifies consummation of marriage.

9. As a rule physical maturity is considered to be justified more for the consummation of marriage than age.

10. In Garhwal a girl would be competent to give an intelligent consent to cohabitation with a due realisation of consequences after the age of 16 or 17 and not before that in any way.

11. Professionally, I have come across cases in which cohabitation before puberty or full physical development of a girl resulted in injury to her health and affected a good deal to her progeny.

12. The result of infantile mortality in this district is rather due to being not taken proper care of the infant and bad sanitary conditions of their lodgings and surroundings and malnutrition of the mother and child alike than the early consummation and early maternity which are very rare in this district.

13. In Garhwal the public opinion for the extension of the age of consent enforce in the law is not general complaint.

14. Females in Garhwal favour early marriage but not early consummation of it.

15 and 16. Yes, if the age of consent is raised to 14 years or a year or so about it would put a stop to the difficulties, experienced by the law courts in determining the age of girls in connection with offences committed under sections 375 and 376 of the I. P. C.

21. I rely rather on the progress of social reform by means of education and social propaganda than the strengthening of the penal law to secure the object of mis-appropriation of marriage.

### Written Statement of the President, Bar Association, Lucknow,

1. No, not at least among the largest section of the people.

2. (a) No demand by the people in general.

(b) No state of unrest is felt among the people on this account, hence there is no agitation by them.

(c) The agitation is confined to a few selected lovers of western civilization.

(d) No actual harm is noticeable in the condition of the society, or state of health of the mother and child.

3. No, crimes of seduction and rape are not very frequent in this part of the country.

4. I think the raising of the age will tend to increase the number of such cases. The number of girls of the age up to 13 will be comparatively lesser than the number of girls up to 14 years of age as the latter will include number of girls who are up to 13 years and less, and also the number of girls above 13 and below 14 years. By including this extra number of girls the field for committing this offence is enlarged and there will be more likelihood of increasing the number of such offences. It will give greater latitude to the law to get hold of delinquents. The criminal minded person will have larger number of girls to make his selection from. It will not have the effect of preventing or reducing the number of rape cases thus.

5. This is highly controversial. The girls in India at least in the higher and well-to-do circles attain puberty generally between 12 and 13, and even earlier. The raising of the age of consent to 13 will mean postponement of consummation even after the puberty is attained, i.e. it will mean depriving the husband from his legal right. It will over-ride the religious tenet enjoining that a husband becomes sinful when he does not grant gift of semen to his wife after the period of menstruation. He will be guilty of lessening the progeny of mankind.

The appearance of menstruation is the indication of girl's fitness for consummation. Nature has declared her that she could be used for creating the progeny of mankind. Nature's rules and principles are infallible. It is to be presumed therefore that if the conditions are normal and normal development of the girl proceeds in the usual manner, the girl is fit in every way for consummation and for bearing progeny. It is quite a different thing if a girl by reason of ill-health or some other unusual circumstance, is not found fit at puberty in every way for child-bearing or producing a healthy child, that will be an exception to the rule brought about by unnatural circumstances. If more girls are found unfit, feeble and sickly owing to illness or ill-health for bringing forth healthy child, the fault is not of consummation at puberty, but it is due to want of proper nourishment. For the removal of this evil increasing or raising of consent age is not the proper remedy. Say for argument sake that if the girls after attaining puberty remain unfit, feeble and weak for child bearing for two or three years more, will it be pleaded that the age of consent be again raised to 15 or 16 years. Certainly not. Functions of Public Health Department should not be interchanged with the functions of the legislature.

The extraordinary percentage of child mortality cannot by any stretch of reason be said to be due to infant marriage or the so-called early consummation; when nature has granted certificate of puberty and fitness for consummation, it cannot be called early consummation. The proper age for consummation is the time of the appearance of the menses whether it takes places at 12, 13, 14 or at a later age.

In the later strata of society and in the poorer classes, the appearance of menses is delayed in most cases. It is due to want of proper development which in most cases is due to proper nourishment and poverty of the country. If in India early marriage is enjoined there are graver reasons for it. If it be assumed as I have shown above that appearance of menses is the indication of fitness for consummation and if it be considered that normally developed girl will have her menses only at the time when she is found by nature in every way fit, then it is most natural that consummation should take place and the duty of producing children and increasing progeny of human kind should be attended to very seriously at the appearance of menses—failure of this duty is therefore regarded as sinful. If early marriage does not take place or would not have been enjoined the possibility of finding a husband at the proper time would have been removed, for a proper and suitable husband could not be had at the nick of the moment.

To prevent abuses of early marriage and safe-guard the interest of the marital pair, second marriage is introduced. Without the performance of the second marriage which takes place either in the 1st or 3rd year of the marriage according to the condition of the girl, the girl is not allowed to go to her husband's house. A father would not allow a second marriage of a very minor girl, or even if it takes place, the mother-in-law there would not allow her sleeping at night with her husband, till puberty is attained. These are very healthy restrictions and the state of living of members in a Hindu family which curtails most of the freedom of the marital pair is another insurance. The raising of consent age is absolutely uncalled for and not warranted by the state of the society in India.

If it is meant to do so, it should be penalised that no husband is to consummate the marriage before the commencement of menstruation, or say till a fixed period after menstruation.

6. No. (2) Yes, (3) not confined to any particular year of age.

During my practice of more than 30 years I have not seen a single case coming before the court of marital offence.

7. It is enjoined in the Puranas that if a man does not give the gift of semen to his wife when she becomes purified after menstruating period, he will be deemed sinful.

8 and 9. Already answered.

10. At the age of 13 or later when menstruation begins for without menstruation she does not feel truly the passion for cohabitation.

11 and 12. Included in No. 5. Strictly speaking there can be no early maternity. The law of nature is so rigid that no conception can take place before menses. If the state of health make this premature, it is the sickness or the disease responsible for this and not the age. A girl at the age of even 20 may not be fit to bear the strain of pregnancy of producing a healthy child. The function of Public Health Department should not be usurped by the legislature. The remedy lies in improving the public health and not penalising a legal right.

13. No.

14. There is the same feeling among them as is among men, generally neither men nor do women favour consummation before puberty.

15 and 16. No case has come to court during my practice of more than 30 years. There will be difficulty no doubt. If instead of fixing a particular age for the purposes of consent, the commencement of menstruation is fixed as the proper time for consummation it would be better and any consummation before it be made punishable.

17. They should be made the subject of a special law and punishment deterrent.

18. It should be bailable and compoundable with the permission of the court.

19. There is difficulty on account of which I hesitate to say anything so hurriedly.

20. The latter will be consonant with the public opinion.

21. The latter, when any social reform of any consequence affecting widely members of the public is intended, it is always better and fruitful to effect it by means of education and social propaganda.

**Written Statement, dated the 3rd September 1928, of the Chairman,  
District Board, Kheri.**

1. The educated section of the community is dissatisfied with the state of law as to the age of consent as contained in Sections 375 and 376, I. P. C. The low age at which sexual intercourse in this country commences is largely responsible for the miserable condition of the residents of this country.

2. Early consummation of marriage presupposes early marriage and early marriage stands in the way of females and is itself a great drawback in the development of the country. For the manly growth of the nation the age of marriage should be enhanced similarly consummation of marriage below the age of growth should be made an offence. There are no valid circumstances justifying the retention of the present law of the age of consent.

3. The crimes of seduction and rape are not very frequent. It cannot be said that the change in this has had much effect. For marital state the age of consummation of marriage should be raised to 14 years and outside marital state it should be made an offence if a man has sexual intercourse with a woman below the age of 16 years.

4. As stated previously nothing can be said about the effect of the amendment of the law in 1925. But public opinion is moving in the direction of raising the age of marriage.

The amendment of law as proposed will have great effect.

5. The usual age of puberty is 13 to 15 years according to the circumstances of the families. Well-fed girls attain puberty earlier than girls of poor families.

6. Cohabitation is common soon after puberty. Cases seldom come to court.

7. Religions in question has got nothing to do with the consummation of marriage. There are instances amongst the people under the force of which people marry their children in childhood and when there are early marriages early consummation there of necessarily follows.

8. Gauna is usually performed in this part of the country. It coincides with the consummation of the marriage. This is performed generally after the attainment of puberty.

9. I do not consider that the attainment of puberty is sufficient indication of physical maturity for consummation of marriage. To ensure the health of the girl and her progeny consummation should take place three years after the appearance of the signs of puberty.

10. Sixteen years.

11. I have come across cases where immature girls have given birth to children but they have invariably died and the girls have remained in emaciated condition. It is difficult to give details of such cases. Cases in courts have occurred where sexual intercourse with immature girls has resulted in serious injury to her private parts.

12. Early marriage and its early consummation is mainly responsible for the fallen condition of the people and high matrimonial and infantile mortality. It has also affected the intellectual and physical progress of the people.

13. The development of public opinion is confined to educated classes only who now realize the evil effects of early consummation of marriage. It cannot be said that the amendment of law has had its effect. The uneducated masses will be guided on right lines when the law will penalize early consummation of marriage.

14. No.

15. Yes in every case that comes before the court the question of age becomes material and courts are generally guided by medical evidence which is after all opinion and not a fact. The work of writing birth and death registers should be entrusted to Patwaries who are literate as the chowkidars are generally illiterate. The person making entries in the birth registers should also take the signature or thumb impression of the father or guardian of the child to ensure the correctness of entries regarding birth.

16. The raising of the age to 14 years will not make much difference as the marriage of error will contain the same as before with slight variation. The signs of puberty will be more prominent at 14 than they are at 13.

17. Yes. I approve of the suggested legislation in the matter. The punishment prescribed therein is sufficient. It is hoped that with growth of the public opinion and knowledge of the people regarding Penal Law offences in marital state will be rare.

18. The offences in marital state should be tried by the District Magistrate.

19. The answer is the same as that of previous question.

20. Early consummation prevented precaution of early marriage. The public opinion generally follows good legislation. At present marriages in India take place even while the children are in womb and census reports show that there are widows below the age of 5 years. If the Government passes the law that marriage of children below a particular age is criminal the people in course of time adopt the law and conform to it. Even if the Government passes the law fixing the minimum it will be adopted.

21. I would prefer the strengthening of the penal law to secure the object in view. I am agreeable to be examined orally if necessary.

**Written Statement, dated the 8th September 1928, of Mr. H. MAYA DAS,  
Agricultural Gardens, Cawnpore.**

1. There is dissatisfaction to the extent that while marriage is permitted at any age and the law countenances the girl living with her husband before the Age of Consent, should be natural consequence of living together namely cohabitation occur when the girl is below the Age of Consent, the law severely penalises the husband. In other words interference by law in marital relations when marriage has been permitted is resented. Therefore the Age of Consent should coincide with the minimum Age of Marriage, which should be sixteen years at the minimum. Another weak point in the law is that while the man is severely punished the woman goes free. I mean in cases where consummation takes place when the wife is below age, the wife consenting knowing she is below age.

2. The circumstances which in my opinion justify retaining the law of the Age of Consent as it is are practically negligible for they arise only because of the religious sentiments of the orthodox people. The circumstances, however, which justify making an advance on the present law are ample and pressing. These are generally as follows :—

- (a) That a girl does not attain development sufficiently to bear either the strain of child bearing or of sexual intercourse until she attains the minimum age of 16.
- (b) The fact that the Age of Consent is treated as a matter apart from the age at which marriage is permitted.
- (c) Public opinion has already been roused to a serious consideration of the question of delaying marriage of girls until they are physically sufficiently developed to bear the natural consequences of marriage



- (d) Certain sections of public opinion also consider that a girl cannot be expected to finish her education within the limits prescribed by the present Age of Consent. This of course applies only in cases of marriage.

The raising of the Age of Consent to 16 will prove greatly advantageous as the fear of jail is a deterrent to the average person.

4. (1) To a small extent yes, but should cohabitation take place, the girl is too frightened to speak of it and it is hardly likely that her parents would report the matter because the husband would suffer the penalty of the law.

(2) Public opinion has certainly been stimulated by the amendment of 1925 but considering that a girl is allowed to go to her husband's home before she attains the Age of Consent, public opinion is powerless to prevent the natural consequence of the sex urge.

(3) To a certain extent yes but to no effective degree have marriages been put off beyond 13 because of amendments in the law. No steps can be taken to make the present law effective to any satisfactory extent. The only remedy is to coincide the Age of Consent with the Age of Marriage (16) and then penalise the offence.

5. The age at which girls attain puberty in these parts is not fixed. It varies roughly from 12 to about 15 years. In meat eating and richly fed vegetarian communities puberty is generally attained earlier, say at 12 or 13 years. In the case of poorly fed people puberty is attained later, probably because development is delayed. The age of puberty in this case is roughly from 13 to 15 years.

6. There may not be many such cases but the answers to sub-para 1, 2, and 3 are in the affirmative because there is nothing to prevent it except the law which can operate only if facts are known or brought to light. The crime is such that only in rare cases are the facts brought to light or if brought to light adequate proof produced of its commission. Also the Hindu religion enjoins marriage at ages below the present Age of Consent. The married girl is taught by customs to submit blindly to the will of her husband. Moreover an unmarried girl below the age of the present Age of Consent is too much of a child to have the courage to make a proper complaint to the police.

7. The answer to the first part of the question is in the affirmative. As proof of this, the following injunction is contained in a book entitled "Parashari Shighra Bodh" written by Pt. Kashi Nath about the time of the early Mohammedan invasions of India :—

(Translated from the vernacular.) "Girls should be married at the ages 8, 9, or 10, in which case the mother, father and the elder brother of the girl will attain *Swarg* or heaven; and if marriage is performed after this age the mother, father and the elder brother of the girl will go to *Nark* or hell.

8. The "Gaona" or "Garbhadhan" is performed in these parts of the country just after the appearance of the first menstruation.

9. The answer to the first part of the question is in the negative. The answer to the second part is best given by the ancient Hindu physician Dhanvantri :—

"Savages living in a state of nature, like animals, may instinctively consider puberty as an indication of the proper time to commence mating. Our girls, however, due to the advance of civilisation through the centuries are not able to bear the strain not only of maternity but of sexual intercourse immediately on attaining puberty." He also says in his book "Sushrut" that girls acquire full bodily development at the age of 16 and only then are fit for child bearing.

10. At least 16 years.

11. No personal experience but there must be numerous cases records of which are mostly available in the annals of professional medical men and women. The country *Dai* or maternity nurse should be a fruitful source of such information. Authorities in charge of girls boarding schools may also be in a position to throw light on the subject.

12. Yes, most certainly. A weak undeveloped mother is bound to give birth to a weak undeveloped progeny. In other words like begets like and Mendel's Law of Inheritance points in the same direction.

13. Yes, the feeling is very strong. Advance in ideas is more or less confined to the educated classes.

14. No, as is obvious from the frequent meetings held by the women demanding the abolition of early marriage and raising the age of consent.

15. Yes, there is difficulty in ascertaining the age of girls or even boys for that matter. The more so as an accused almost always takes shelter under the plea that the age of the girl has been understated.

The following measures should help a great deal to remove or minimise these difficulties :—

(a) A law insisting on the registration of births should be strictly enforced so that the age of any boy or girl in the country may be conveniently ascertained.

(b) Birth certificates should be issued by the registering authorities.

(c) Educational institutions should insist on a birth certificate as proof of age before admitting children to schools.

16. Yes, if the age of consent, marital or otherwise, is raised to 16 years, it should be easier to determine the age of a girl against whom the offence has been committed because the development of girls when once the Age of Consent is raised to 16 years will tend to be delayed. There will be no forcing of development which results from very early sexual relations; and a minor girl will retain her child-like looks making it easier for the prosecuting counsel to estimate the age of the girl.

17. If the Age of Consent both within the marital state and without is raised to 16 then I should not separate such offences into different offences and the existing punishments are enough.

18. Yes. (1) In cases within the married state arrests should be made only by warrant and the offence should be bailable.

(2) In cases outside the married state arrests may be made without warrant and the offence should be non-bailable.

20. As stated in the answers to previous questions, fixing a minimum age for marriage and making it coincide with the Age of Consent will be the only effective legislation because it is not possible to guarantee that there will be no cohabitation between man and wife once they live together, even though the Age of Consent has not been attained by the girl-wife. In such cases if there is a breach of the law, who is to complain? Has the girl the courage to do so in face of custom? Have the police access to private houses where purdah is so strict?

If a girl is below the age of puberty her conceiving after sexual intercourse is doubtful though not impossible according to Havelock Ellis. But if she is above the age of puberty and yet under the Age of Consent, she may conceive after such an offence has been committed. Even then discovery is extremely unlikely unless all such cases are taken to a Maternity Hospital. Under the present methods of confinement no such discovery is possible. The police are not supposed to know circumstances within their jurisdiction of every household to be able to suspect that such offences have occurred. If however all marriages are registered it would be easier to investigate matters.

The answer to the second part of the question is that by raising the minimum age for marriage public opinion in this part of the country would tend to be satisfied. It would also improve the health and the morale of the nation.

21. If we are going to rely upon the progress of social reform it is going to take centuries. For in India teeming with illiterate masses chained down with old customs, public opinion cannot always be influenced even though it may be for the good of the country. Nothing sort of drastic measures will remove this cancer

which is killing our people. The penal law must be 'strengthened but education and social propaganda must also be carried on.

**Written Statement, dated the 12th August 1928, of the Sanatan Dharma Sabha, Pilibhit.**

1. There is no dissatisfaction, excepting in the social reformers of an advanced type. The majority of the society being even ignorant of the Law—the point of satisfaction or dissatisfaction, therefore, being out of question.

2. The retention of the present law in regard to the age of consent is supported by us, in so far as it relates to cases of rape between husband and wife ; with regard to other cases the amendment has our whole hearted support. We feel the retention of the present law justified for the former because the proposed amendment, which seems to be intended to indirectly to increase the minimum age for the consummation of marriages, will be likely to effect but little reform but will create much distress in the family life of those who were the victims of the social custom of early marriage and being thrown in the way of temptation fail in resisting it successfully. As long as early marriages are not directly prohibited by law measures of the nature of the proposed amendment can not obtain the desired object. One other reason for keeping up the present law as it stands—in regard to marital cases—is that the amendment of the 1925 has not yet been in the field long enough to create any general favourable impression in the society in respect of the increase of the age further.

3. Have no definite information.

4. Not much in any of the three ways ; progressive legislation may however by degrees bring this about, if it is direct legislation for prohibiting early marriages.

5. 12 is the usual age of puberty among girls and no difference is found, in this respect as a result of their belonging to different castes, etc.

6. Cohabitation before puberty is rare—being found only in castes where child marriages are customary. It is not so rare, it may rather be common, in Hindu society soon after puberty or before completion of 13 years. But such cases often do not reach the court as the party aggrieved is the wife who even at the cost of her life would be willing to shield her husband.

7. The practice is not the result of any ancient Shastric injunction ; but has developed into a custom with a sanctity attaching to it as if sanctioned by the shashtras.

8. Gaona ceremony is usually performed but not so the Garbhadan and this generally coincides with the consummation of marriage. This is generally performed after the attainment of puberty, except in the classes where child marriage is much invogued.

9. Have no opinion to offer on this point.

10. At about 15.

11. Details of such cases cannot be remembered or positively given but such cases though not very frequent, do come at times before eyes and death as a result of pregnancy, quick delivery or consumption has been seen overtaking the poor victims.

12. Early maternity—the result of early consummation—though not the sole cause, is certainly one of the important factor leading to infantile mortality. The intellectual and physical progress of the people has certainly been sadly affected by this evil custom.

13. The amendment of the law in 1925 has not developed public opinion to any appreciable degree generally in the society. The development which is exceptional is confined to enlighten social reformers who form but a part—though an important part of the educated classes.

14. Uneducated women—whatever their caste, age or status in society favour early consummation.

15. Have no opinion to offer.

16. Have no opinion to offer.

17. Yes, will not suggest any exact number of years but have to say that marital offences should be punished more severely in fines than by long terms of imprisonment.

18. Have no opinion to offer.

19. Have nothing to suggest.

20. The legislation fixing the minimum age of marriage is likely to give to be more effective and be more likely to develop public opinion in the matter. Public opinion—intelligent and deservin'g public opinion will support this course more than a penal legislation fixing a higher age of consent. The latter will besides be inequitable and cruel in the present state and conditions of society.

21. Subject to our reply to your query No. 20 be held that penal law for punishing early marriages must accompany the measures for education and social propaganda.

**Written Statement, dated the 22nd September 1928, of Mr. S. ERNEST DEVA-LAL, B.C.S., Civil Lines, Cawnpore.**

It is not my desire to make out a case here for or against the proposed bill for Age of Consent from the point of view of a doctor or a Mullah, Brahmin or a Priest, but from that of an Economist and to show what effect the bill would have on the National wealth and income.

If the whole world was out walking every fifth man will be an Indian. India has three times the population of the United States of America on only half the area. Furthermore we have a comparative lower standard of yield, for instance an acre of land in England produces 1,600 lbs. of barley and 1,900 lbs. of wheat, whereas in India we get only about 850 lbs. of barley and 800 lbs. of wheat. United States of America produces 200 lbs. of cotton, Nile-fed region of Egypt 450 lbs. to every 85 lbs. of ginned cotton on an acre of land in India. With half the acreage under sugar India's output is only one quarter of the world's supply of cane sugar, and the Indian Sugar Committee states that India's outturn of sugar per acre is less than one half of Cuba, one sixth of Java and one-seventh of Hawaii. The Indian woman does only one half as much as an Egyptian woman and one third of a woman in the States in cotton picking. An Indian agriculturist's year's work according to the British standards equals one month's work.

India's poverty is known the world over. Bengal supports 578 persons per sq. mile, Great Britain 460, Germany 311 and France 189. The average income per head comes to about say Rs. 100 a year or roughly speaking 4 annas per day.

It is very unfortunate that the birth registration in India is not yet efficient, however, the difference between the births as registered and the deaths as reported give us a surplus of about six million a year. In other words we are increasing our population at a tremendous rate without making any adequate provision for the increased population either by increasing the productivity of the soil or bringing under cultivation new land or finding new outlets for employment in industries and shipping.

For the present state of affairs both the Government and the people of India are responsible. In what ratio? Every one knows. However, it is not for me here to suggest ways and means to fight the existing poverty and to increase the National income and wealth in all its phases, however, I wish to lay before the Committee only those facts which I maintained would materially affect the national income by the introduction of the proposed bill of Age of Consent and more so by fixing the age of the girls at 16 years.

Poverty is a relative term associated with comparative economic possession of individuals, with this in view and the facts that are given here, I need not prove any further the poverty of India. It is an accepted fact and also it is recognized that the pressure of the population on land is too heavy. One of the means to get out of the present difficulties will be to check the birth rate.

At this juncture it will be foolish to try to push the birth control movement on a large scale, though I believe the girls ought to be educated to it or at least they should not be ignorant of it. At any rate it is most fortunate that this bill should have been brought forward now. It is the need of the day and I hope and pray that it is enacted, for it will decrease the birth rate to a certain extent.

It has been a practice and as some believe it to be a sacred duty in India that a girl should get married young and must begin bringing fourth children as soon, or almost as soon as she is capable of doing so, and to put it in the words of Dr. Slater must continue to bear children till exempted by death or by the cessation of fertility. It is evident, that the primary function of a woman in India is to produce children. With advancement of right sort of education and higher standard of life we can hope that some day the birth rate would be moderate.

It is a common knowledge and the medical authorities have proved that children born out of union where the boy is under 20 and the girl under 16, are defective both mentally and physically and also the death rate of such children is the highest. If one were to think of all such births and deaths in terms of money the amount spent on them will be several millions of rupees. By the introduction of the proposed bill this amount will be automatically saved besides what is much more important the girls of the middle and upper classes will get a chance for mental and physical development. The girls of the lower middle class and the labourers whose women folk are accustomed to working for wages will be a financial help to the parents, as they could go to work along with their mothers. I believe in most cases these girls would be able to contribute if not the whole at least a major portion of the amount to be spent at the time of their marriage.

I am of the opinion that the minimum age for marriage for the girls should be 16 years and 20 years for the boys, the same or almost the same as they have for the Indian Christians. If in their case it has worked out quite satisfactorily, I do not see any reason why it should not also in the cases of the Hindus and the Muslims.

The successful enactment and enforcement of this bill will directly lead India towards the high road of material prosperity, spiritual and moral advancement, furthermore India would escape the looks of contempt with which she has been held by the world for the existence of those inhumane practices, which the proposed bill attempts to do away with.

I shall be pleased to give evidence before the Committee here in Cawnpore or in Lucknow if called for.

**Written Statement of B. BRIJ KISHORE, Pleader, *Ex-Vice President,*  
Arya Samaj, Hardoi, dated n l.**

In reply to your letter No. 82 A. C. C., to the Secretary, Arya Samaj, Hardoi, enclosing a questionnaire regarding age of consent for an expression of view of the said Samaj I on behalf of the said Samaj state as follows :—

1. Yes, there is dissatisfaction in literate classes. The illiterates are unable to understand its importance.

2. (2) The object of the present law is to protect the young girls from the effects of early cohabitation and motherhood. The present law is practically inadequate and insufficient to meet this object. The young girls of 14 have not got sufficient maturity of understanding the consequences of their consents.

3. No, the cases of rape or seduction are not frequent here. The law made in 1925 has done very little to combat the evil.

4. No, it has not been.

In my opinion the effective remedy is to prescribe age limit to marriages.

5. 15 years. The answer to latter part is no.

6. In cases of marital lives, cohabitation generally begins soon after marriage, which is generally performed before puberty. I do not know of any cases coming to court.

7. No, at least I am not aware of it.

8. Yes, it is not always anterior. No, *Gasna* is performed 1 or 2 years after marriage but always within 3 years.

9. No, 3 years after beginning of menses, i.e., at the age of 16 years.

10. 16 years.

11. Yes, I know a case in which a girl of 12 was married to a man of 40. The girl soon after lost her beauty, suffered from various diseases and died at an early age of 35.

12. Yes.

13. Yes, there have been developments among educated people to raise the age of marriage, which is an indication for inferring that the age of consent should also be raised.

14. Yes, because they are mostly uneducated.

15. Yes, there are great difficulties. The system of registering births should be introduced.

16. Yes, if the age of consent is raised to 16 years.

17. Yes, marital offences should be punishable with fine only.

18. Trial in cases of marital offences should be held in camera.

19. No.

20. Prescribing minimum age of marriage is more desirable.

21. Progress of social reform is no doubt necessary but the aid of law is no less necessary.

**Written Statement, dated the 24th December 1928, of Khan Bahadur  
M. BARKAT ULLAH, Vakil, Ghazipur.**

1. Yes, most of us are dissatisfied.

2. I would not justify retaining the law as it is at present in the existing circumstances of our country, but apart from physical considerations I am strongly of the opinion that in the interest of the weaker sex it is very necessary that we should make an advance on the present law.

3. Such crimes are not very frequent here, but the cases we have come across show that the amendment in 1925 has not afforded sufficient protection so far.

4. I would say, no.

5. They attain puberty between the age of 14 and 15. In poor classes it is sometimes retarded for want of proper nourishment and the severer conditions of life.

6. Such cases are very rare in this part of the country. Cases of this nature seldom come to court.

7. As a Mohammadan I am not aware of any such religious injunction so far as our religious books are concerned. Among the Hindus opinions differ, but I have no first hand knowledge of their religious books.

8. *Gasna* is generally performed among the Hindus. It is performed generally soon after the attainment of puberty.

9. No, I do not think so. I would fix 16 as the minimum age when a girl may have a sexual experience without injury to her health and that of her children.

10. This would depend upon individual environment and education. I would however put it at 16 to cover average cases.

11. Yes, I can say both as a law and as a layman that I have come across cases of such nature. In some cases it has resulted disastrously on the health of the mother as well as the child. Details can be given in oral evidence.

12. As a member of the Maternity and child welfare institution and also from experience derived otherwise, my answer to this question will be in the affirmative.

13. Among the educated people the opinion is strongly in favour of the extension of the age of consent. Even the uneducated public has begun to feel the necessity of it now.

14. No.

15. Yes, I have appeared in some such cases a lawyer and have experienced the difficulty myself. I would suggest to increase the age of consent so that the question of consent be determined beyond all doubts.

16. Yes, if the age is raised to above 14.

17. Yes. In marital cases I would impose fine only. The amount will of course depend upon the circumstances of each case. In extra-marital cases I am for awarding the maximum punishment prescribed in the Indian Penal Code.

20. No, I do not think so. I would prefer the latter course.

21. Penal law in my opinion is necessary to secure the object in view.

**Written Statement, dated the 21st September 1928, of SYED ABDUL GHAFFAR RIZAVI, son of K. B. M. S. ABDUL AZIZ, GHANI MANZIL, Hewett Road, Lucknow.**

1. Age of consent—The Islam has not fixed a limited period of time for giving consent. But the consent depends upon mature age or arriving at the age of puberty or discretion. The sign of puberty in women, i.e., the menses (discharging the monthly course) and also the discharge of sperma genitale viriant mulberis (Mani or dream). Finally, I dare to say that no time is fixed for puberty and exercising (permitting) consent. But the permission or consent should be carried on in case of puberty only (2) The Hadith (Hadis) describes that the marriage of the Holy Aisha—The Revd. Lady of the Holy Prophet—Muhammed was taken place when Aisha was 6 years old and when consummation (Honeymoon) was made, Aisha was 9 years old. Under this principle we find that the marriage of women can be made, in minority, at the age of 6 years and the honeymoon at the age of 9 years. But it may be considered that this case depends upon puberty, because in Arabia, puberty found in 9 years limitation. But the condition of India is different from Arabia, therefore, I think that when in according to Indian climate where the women become in puberty the consent may be done and the marriage, at the age of not less than 6 years age.

**Written Statement, dated 13th August 1928, of the Secretary, ARYA SAMAJ, BAHRAICH.**

1. Yes. The increased number of infant mortality and multiplication of female diseases and deaths before delivery are the result of early marriages. Slight modification in the law as contained in Sections 375 and 376, Indian Penal Code, would be most desirable.

2. Early marriages have been responsible for the degeneration of the youth in most cases and fixing an age of consent would undoubtedly be a check on these early marriages. If an advance in present law is made it would serve the purpose.

3. Yes. They are. The amendment has been found efficacious and if the age of consent be raised to 16 years which is the actual age for consummation of marriages according to medical point of view it is expected to achieve much better results.

4. The age of consent within the marital state of 13 years seems hardly to have been effective and in this case again it would be profitable to raise it to 16 years. Public opinion can be easily stimulated.

5. Age of puberty is generally between 13 and 14 years. There is no marked difference among different castes, communities or classes of society except in those who generally use flesh, fish and wine, etc.

6. Cohabitation is common in low castes and illiterate people. Cases (1), (2) and (3) do come to court.

7. There is absolutely no religious injunction, authorising early consummation of marriage. People in favour of early consummation of marriage often quote Parashar and Shighra Bodh but the authority of Dhanvanta in Shushruta is generally recognized.

8. *Gaona* and *garbhadhan* are performed but there is fixed period for the same.

9. 16 years and not before it in any case consummation of marriage can be justified according to Shushruta.

10. 16 years or more according to Shushrut.

11. We have come across several cases in which cohabitation after puberty but before full physical development of a girl which resulted in injury to her health and death. The age of girls ranged from 13 to 15.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality. *Garbhadhan* before 36 times of monthly course is responsible for early deaths of married girls and infantile mortality.

13. Since the amendment of the law in 1925 general opinion of public is to raise the age of consent to 16 or above.

14. No.

15. Difficulties are felt. Early marriages should be discouraged.

16. Difficulty in determining the age will be reduced if the age of consent is raised to 16 at least.

17. The punishment should be the same in both cases either extra-marital or marital as prescribed in 376, Indian Penal Code.

18. No change seems desirable.

19. Nothing more seems possible through legislation. Much can be done by a public propaganda.

20. The public is of opinion that the legislation fixing the minimum age of marriage can be more effective.

21. Law will be more effective but education and so propaganda will help much.

**Written Statement, dated the 9th August 1928, Rai Sahib CHANDRA BALI RAI, Deputy Collector, Ballia.**

1. No. The masses are little aware of the law regarding the age of consent. Nobody ever expressed to me any dissatisfaction.

2. (2) I am in favour of making an advance on the present law as defined in Sir Hari Gaur's bill.

It will have the effect of protecting female children from premature cohabitation and from immature prostitution.



3. No. No case of rape came within my knowledge during the last 3 years that the amended law has been in force.

I think the amended law has succeeded in reducing cases of rape and improper seduction of girls for immoral purposes. I am not in possession of figures.

4. No.

(1) The dowry is on the increase. The collection of money takes time. The result is that girls are now married at or after 14. (2) In cases where marriage takes place before 14 the consummation of marriage is postponed to one, 3, or 5 years depending upon the age of the girls when her *Gaona* ceremony is performed.

(3) I know of no cases in which the marriage is put off beyond 13 for fear of the law.

5. 11 to 12 years is the age at which girls attain puberty in this part of the country. I think it differs in different classes of society. It happens earlier where the girls are well off and live in *pardah*. It happens later when they work in fields. In the cases of sickly and ill fed girls also it happens later. My knowledge of this fact is however limited.

6 No.

(1) No.

(2) No.

(3) No.

No case has come to court in my knowledge.

7. I do not think early consummation is attributable to religious injunction.

8. If the girl is married after 14 she is given in marriage at once or so soon after it as possible. If she is married before 13 or 14 the *Gacna* is performed after 1, 3, or 5 years according to the age of the girl. *E.g.*, if the girl is 11, 12 or 13 the *Gaona* will be performed after a year, if 10 or 11 or 12 then after 3 years and if of 8, 9, 10 then after 5 years. 2nd, 4th and 6th year are considered inauspicious for *Gaona*.

9. No. 3 or 4 years after puberty a girl may be considered to be physically developed for consummation of marriage. I fear it is the opinion of a layman.

10. 13 or 14 years.

11. No. It is difficult to give the age of a girl as soon after the marriage she should not be looked at except by the female relations and younger male relations. However I have formed this opinion that the progeny of a girl of under 16 is mostly either still born or dies within a year.

12. Yes. Early consummation is principally responsible for high maternal and infantile mortality. There are other factors also, *e.g.*, malnutrition and want of medical facilities.

13. There is no public opinion in favour of the extension of the age of consent. It is still at its academic stage.

14. No. They favour early marriage in the hope of getting a daughter-in-law to rule over and to serve. The idea of a child arises at the age of 18. After this age, the mother gets anxious about the daughter's fitness to have a progeny.

15. No. No cases come to court in which the husband was an offender. Extra-marital cases were also few and far between.

16. As a layman I think it is difficult to answer this question. If pressed for an answer. I would reply in the affirmative.

16. Yes. In the case of marital offence in which the wife is not under twelve I would recommend simple imprisonment for one year, as the maximum punishment.

18. In the latter case of marital offence in which the wife is not under 12 I would recommend that the offence be triable by a magistrate of 1st class.

19. No.

20. A higher age of consent would be more in consonance with the public opinion in this part of the country. The reason is simple. The marriage does not necessarily mean consummation of marriage.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda.

**Written Statement of Mr. TUFAIL AHMAD, Sub-Judge, Etawah.**

1. There is no dissatisfaction with the state of the law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code.

2. (1) None.

(2) The present mortality amongst children and young people especially a few years after married life and general constitution justify to make advancement of the present law.

3. Crimes of seduction and rape are not frequent in this part of the country. The latter portion does not require an answer in view of the above answer to the first portion.

4. I have no personal experience in this direction. What I would suggest is that Committees of public men including high officials be formed in each Tehsil and District to make observations and to suggest steps in case the law is broken.

5. The usual age at which the girls attain puberty in this part of the country is 12.

6. (1) Cohabitation before puberty is common among Vaishas and Brahmans and in lower castes.

(2) Common amongst Brahmans, Kshatriyas, and Vaishas.

(3) Among the Hindus.

Such cases seldom come to court.

7. The practice of the early consummation of marriage before or at puberty is due to a prevalent religious notion that girls should be married before 12. The religious texts are in Manu Smriti and in Yajnavalkya.

8. *Gaona* ceremony is unavoidably performed in this part of the country. It coincides with the consummation of marriage and is performed after one to three years of marriage.

9. No. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. At least two years after puberty, a girl's physical development may be considered to be enough to justify consummation of marriage at the age of 16 or 17.

10. At about 15 or 16 years of age.

11. I have got no reference of such cases.

12. Yes.

13. No.

14. Very few women do but most do not favour early consummation of marriage for their children.

15. In such cases the girls should be X-rayed by the Civil Surgeon as Ossification of bones is a very important criterion for the determination of age.

16. No.

17. Yes, I would like to separate marital and extra-marital offences into two different classes. The maximum punishment in the case of marital offence should be Rupees Five Hundred fine and one year's Simple Imprisonment. In the case of extra-marital offence the present punishment may be maintained.

18. The cases of marital offence must be tried by Special Panchayat to be created for this purpose and extra-marital offence may be tried by Courts as at present.

19. The answer to this is covered by the answer to question 4 by giving full authority to the Special Committee to be formed of public men and high officials.

20. Both penal legislation fixing higher age of consent for marital cases and legislation fixing the minimum age of marriage would be equally effective. Legislation fixing the minimum of age of marriage would be in consonance with the public opinion.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view as the progress of social reform by means of education and social propaganda is very slow.

**Written Statement, dated the 11th August 1928, of Mr. GAURI SHANKAR,  
General Secretary, Arya Samaj, Dehra Dun.**

1. There is dissatisfaction with the state of the law as to the age of consent (14 years) as contained in sections 375 and 376 of the Indian Penal Code as much as it does not coincide with the law of Manu.

2. The circumstances which in my opinion justify making an advance on the present law is the improvement of education and social propaganda made by the Arya Samaj.

3. Crimes of seduction are frequent in this part of the country. The amendment of the law made in 1925 raising the age of consent has done much to prevent cases of rape outside marital state or the improper seduction of girls for immoral purposes.

4. The amendment of 1925 raising the age of consent to 13 years has not been effective so much by postponing the consummation of marriage or by stimulating public opinion in that direction as by putting off marriage beyond thirteen. It can be made more effective by giving the public an opportunity to hear the bad effects of early marriage by lantern lectures or similar means.

5. The usual age at which girls attain puberty in this part is between thirteen and fourteen. It must differ in different castes, communities or classes of society according to the nature of food they take or the society they walk in. Lower class girls attain puberty between 12-13. The European society attain puberty at an advanced age.

6. Cohabitation is common soon after puberty. I cannot say anything of Nos. 1 and 3.

7. It is the general belief of the people that girls are fit for cohabitation after attaining puberty. The religious injunctions ..... i.e., a man who sees his daughter unmarried after she has attained the 10th year goes direct to hell. It puts a course on these who do not follow the injunctions.

8. *Gauna* is usually performed in our part and is performed in the 1st or 3rd or 5th year after marriage when the parents think the girl fit for cohabitation.

9. I do not consider the attainment of puberty sufficient indication of physical maturity to justify consummation of marriage. It is only an indication to attain puberty. In my opinion the earliest time for consummation of marriage is after 3 years of puberty or the health suffers, and the progeny given birth to is weak and sickly.

10. A girl should be competent to give an intelligent consent at sixteen at least.

11. I have seen girls who have sustained physical injury by cohabitation before puberty. They become lame and maimed and unfit to walk about and consequently die an early death. There was a case decided in the Allahabad High Court in the month of June, 1928, in which a man was punished for cohabiting with his girl wife who was under 13 years of age. The poor girl became unfit for life.

12. I do believe that early maternity is the cause of high maternal and infantile mortality.

13. It is confined to certain classes.

14. Women in this part of the country do not favour early consummation of marriage.

15. I cannot say.

16. The difficulty would be reduced if the age of consent is raised above 14.

17. I should not say anything to it.

18. I cannot say.

19. None.

20. I consider the fixing of the minimum age of marriage to 16 is likely to be more effective. This is more in consonance with the public opinion in this part of the country.

21. I rely on both to secure the object in view but preferably the latter.

**Written Statement, dated the 15th August 1928, of Mr. RAM CHANDRA GUPTA, Secretary, Arya Samaj, Bijnore.**

1. The age of consent should be not less than 16. The evils of early consummation of marriage or cohabitation are amply shown in Miss Mayo's "Mother India."

2. (1) The present age should not be retained.

(2) Answer given in No. 1.

3. Such offences are not frequent in these parts.

4. Generally the husbands are not allowed access to their wives before they are well developed.

5. Girls usually attain puberty between 13 and 14 years of age. In non-vegetarian communities it is between 12 and 13.

6. (1) No.

(2) Different notions in the matter.

(3) No.

Such cases do not come to court.

7. The practice of the early consummation of marriage is not due to any religious injunction.

8. No. The "*Garna*" ceremony is now generally ignored in these Provinces, for in 90 p.c. marriages the girl's age is always above 15 years.

9. No, at least after 2 years the girl has attained puberty, she can be considered to be developed enough to justify consummation without injury to her health and that of her progeny.

10. At least at 16 years.

11. Not in our experience. But much is given in "Mother India."

12. Of course.

13. Here in these parts public opinion is generally in favour of an extension of the age of consent which should be fixed at 16 years.

14. No. There may be some exceptional cases. That may be the tendency in the old bygone days.

15 and 16. Before the girl reaches 16 years, between 14 and 16 it cannot be definitely opened what is the real age. But it can definitely be said whether the girl's age is above or below 16 years.

17. In the cases of husbands if they cohabit with their wives below the age of 14 years the maximum punishment must be 5 years and in the case of others just as it is at present.

18. Both should be triable only by the Sessions Judge and the marital one with the help of jury.

19. As at present.

20. Fixing the minimum age of marriage will be more effective than the higher age of consent. The former one would be in consonance with the public opinion here.

21. Only penal law can secure the object in view.

**Written Statement, dated the 13th August 1928, of Rai Bahadur Pandit  
PITAMBAR JOSHI, Retired District and Sessions Judge, Almora.**

1. I am not aware of any dissatisfaction on the point, and I think there is none.

2. There is no harm if the present law is maintained as regards "the husband," but the country is advancing in social matters; so the law may as well advance.

3. My answer to the first part is no. The crime is not frequent in Almora district. The change is law made in 1925 is not felt.

4. Very few people are aware of the law, but a natural change has set in among the people by which they desire postponement of marriage and consequently its consummation. Some thirty years ago the usual age for marrying a girl in higher castes was between 8 and 10 years but now a girl is seldom married before 12 and often between 13 and 14.

5. I think between 13 and 14 years in sedantary classes, in labouring classes it may be taken as between 14 and 15 years. I believe that the age of attaining puberty is about two years later in hill districts than in plains districts.

6. I think it is common after puberty. I have no experience in the matter, but I think very few cases come to court.

7. I do not know of any religious injunction, but there is traditional feeling that cohabitation should take place after puberty. The breach is not considered penal.

8. The "*Gacna*" and "*Garbhadhan*" are different ceremonies. Each of them is invariably performed. "*Gacna*" is the bringing of the wife to the husband's home reside there sometime after the marriage. The wife does go to the husband's house immediately after the marriage, but that is for four days only, after which she returns to her parent's home. The "*Gaona*" ceremony takes place afterwards, and it is then that the wife comes to reside permanently in the husband's home. It takes place either within sixteen days from the marriage or after one year, or after three years, or after five years. If it is within sixteen days, no astrological date need be fixed for it. But if it is after one year or three years or five years, then a strict astrological date has to be fixed, as in the case of marriage. When early marriages were frequent (the girl's age being between 8 and 10 years, as I have stated above) the "*Gaona*" ceremony used to be postponed till after 3 or 5 years, but since a change has taken place to have marriages when the girls are between 13 and 14 years of age, the "*Gaona*" is after performed within 16 days from the marriage. The "*Garbhadhan*" ceremony takes place always after the wife's puberty and before the first conception. It is not so important as "*Gaona*."

9. I would answer the first part in the negative. Regarding the second part I should think one year after the attainment of puberty.

10. I should think "fifteen years."

11. I have heard of several such cases when a Hindu widower marries a Hindu girl of a caste in which widow marriages are not allowed. In such cases the girl is between 12 and 14 years of age, as I have said in the reply to question No. 4 above, but the widower may be of any age, 30, 40 or more. He does not wait long for cohabitation after the marriage and the result is injury to the young wife. I am unable to give details of age and injury in each case, but I have heard of many lamentable cases. The remedy to prevent such cases lies in the introduction of

widow marriage in the castes in which it is not permitted at present, or in preventing marriages between persons of grossly disproportionate ages, but this is beyond the province of "age of consent" law.

12. Yes;

13. Yes. There is progress every year, irrespective of the legislation in 1925. The progress is owing to general advancement in the liberalization of the social ideas of the people. The causes whereof are education and to some extent social propaganda. This advancement is general and not confined to any special class.

14. I should think so.

15. Difficulty is experienced sometimes, and it is greater in cases of Muham\* madans than of Hindus. The Hindus as a rule keep horoscopes, and their priests also in many cases keep memos of dates of births. But in contested cases there is danger of horoscopes being suppressed or altered and the priests prevented from producing their records. The Muhammadans do not keep any record as far as I know, and in their cases the courts have to depend mostly on oral evidence, which is often false. I think one remedy may be to keep birth register by Government agency. They are in fact kept now, and I think they are admissible under Section 35 of the Indian Evidence Act. But I do not know how long they are preserved. I did not see any produced in court within my experience.

16. I think the answer should be in the affirmative. The greater development of the girl should afford clearer indication of her age.

17. It is not of much consequence whether the offence of the husband is termed "rape" or "illicit intercourse," but since the question has to be answered I think the proposal of Sir Hari Singh Gour to enact a separate provision like Section 376A given in the questionnaire, may be adopted. The age limit against the husband may be raised to 14 years and against the other offenders to 15 or even 16 years. I think, however, the great caution is necessary in the trial of cases against husbands, and I would not on any account substantiate the jurisdiction of a "first class magistrate" for that of the Court of session or of the "District Magistrate," as is proposed by Sir Hari Singh Gour in S. 376-A. given in the questionnaire. In my humble opinion no officer below the rank of a District Magistrate should be entrusted with the trial of the offences of the nature in question. The punishments as they are at present may be retained, with variations as to the age of the girl concerned.

18. As I have stated above, I am unable to agree to Sir Hari Singh Gour's proposal to make over the trial of offences within the marital state to first class Magistrates in lieu of session and District Magistrates. They should not be tried by any officer below the rank of District Magistrate.

19. I do not know of any.

20. Legislation fixing the minimum age of marriage will certainly be more effective than penal legislation fixing the age of consent to prevent offences within the marital state. To give full liberty to marry at any age and at the same time to render the union penal is to hold out a temptation and then to punish those who are unable to resist the temptation. It is better to avoid the temptation altogether.

21. Social propaganda is not much effective, many people who preach the virtues of social reform do not conform to their tenets when they are personally affected. Education is making good progress, but in many cases educated young men have to yield against their conscience to the dictates of their elders who cling to conservative customs. Hence, penal legislation is necessary; it is far more effective than either of the other two courses.

**Written Statement, dated nil, of Pandit SHIVA NARAIN SHUKLA, B.A., LL.B., President, Arya Samaj, Kheri (Oudh).**

1. There is certainly dissatisfaction with the present law of consent.

2. In my opinion the present law should be changed because (1) It leaves very little time for the girls to get education even up to the VI standard. (2) Early marriages are responsible for increased infant mortality. (3) Cohabitation with a girl of immature age ruins the health of the husband and in cases of conceptions, weaklings are born who easily fall a prey to diseases.

3. Crimes of seduction and rape are very frequent in this part of Oudh. The raising of age in 1925 has to a certain extent succeeded in reducing cases of rape outside the marital state. In so far as it has been made applicable to married women not much use has been made of it and the chief reason for it appears to me to be absence of publicity. The Government in my opinion should ignore the "religion in danger cry" of some old orthodox so called leaders of Hindu religion and make the law still stringent. The offence of illicit married intercourse should be made cognisable, non-bailable, non-compoundable.

4. The amendments of 1925 have improved the situation by stimulating public opinion and putting off marriages beyond 13, but to a very small extent. In my opinion, the parents or persons taking "Kanya Dan" should also be punished as abettors.

5. Girls in this part of the country generally attain puberty after 14 and in rare cases before 14.

I have no idea if this differs. So far as my experience goes, girls attain puberty not before 14 in every community.

6. It is common among Kurmi community of this district and also Kankubj Brahmans to have cohabitation before puberty. Such cases rarely come to court.

7. Yes, religious injunction have much to do for this miserable condition. The well-known couplets, **अष्टवर्षी भवितोरी** etc., which are responsible for this early consummation of marriage are of doubtful utility now and have not the sanction of Dharma Shastras. They were probably written by some clever pundits during the dark days of Moslem invasion in order to protect the honour of their daughters.

8. Yes, "Gaona" is performed here but it is generally done a few months after marriage and the old view that consummation should be after *Gaona* is not observed now. Even Educated families allow the newly married couple to remain together soon after their marriage and consummation follows as a matter of course without any regard as to whether the girl has attained puberty or not.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. In my opinion at least 3 years should pass after menstruation, when the girl should be subjected to consummation.

10. At the age of 16, a girl in India is expected to give an intelligent consent for cohabitation.

11. Yes, I have come across many such cases but I cannot at present give details.

12. Yes, certainly.

13. Yes, public opinion certainly favours an extension of the age of consent in marital and extra-marital cases. Public awakening is generally growing in favour of the extension of the age-limit, but an account of illiteracy and mass ignorance such opinion does not find publicity outside the educated few.

14. No, certainly not, the new generation of woman do not want early marriage for their children, barring of course the old grand-mothers who want to see their grand-children married during their lifetime.

15. The vagaries of individual medical officers and their uncertain, vague and confused statements are responsible for a large number of failure of cases under Sections 375, 376. Courts of Judicial Officers attach undue importance to the views of medical experts, although my own view is that the sworn statements of parents and near relations can safely be relied on in preference to the views of medical officers, which are at best the opinion of experts. One of the measures that I would suggest to remedy it is that the girls should invariably be examined by lady doctors in cases of Sections 375 and 376.

16. My own view is that the margin of error would be materially reduced if the age of consent is raised to fifteen.

17. Yes, for at least 10 years, cases under marital and extra-marital offences should be kept separate. The proposed amendment of adding Section 376-A, would in my opinion be sufficient for the purpose. Warrant should issue in the first instance and the punishment should be five years and whipping. Whipping should be given in every case. The offence should be made exclusively triable by a court of sessions.

18. No separate procedure is required for offences within or without marital state.

19. In case of offences within marital state the prosecution should be sanctioned by a Magistrate of the 1st class and no warrant be issued except by a Magistrate of the first class.

20. My view is that legislation fixing the minimum age of marriage would be more effective.

21. Education and social propaganda are not sufficient to cope with the evil, the penal law should be strengthened even at the risk of some opposition.

**Written Statement, dated 12th August 1928, of Mr. B. R. YUGALANAND,  
Secretary to Satyavadi Sanatan Dharm Goshithi Sabha, Gonda.**

1. Not in my knowledge.

2. (1) I am not in favour of retaining the present age.

(2) I am in favour of 16 years ; for a girl is fit for sexual intercourse at this age generally which is the proper time for Gavana she being married just after puberty according to the injunctions of our Shastras from which we should not and must not differ. Much stress should be laid on Gavana which on no account should take place before 16.

(3) Crimes are frequent in this part of the country. The raising of the age in 1925 did not affect the number of crimes. Cases under these sections should be severely dealt with.

4. (1) Yes.

(2) Very slight.

(3) Very slightly. The economic conditions favour the marriage not below 12.

5. 12 years. It depends on good or bad health.

6. (1) No.

(2) Yes. There is a tendency to do so in general.

(3) Very seldom. Hardly any but rape cases.

7. Yes. If a girl is not married just after puberty parents are said to commit a great sin, authority Manu, etc.

8. *Garbhadhan* ceremony should be performed soon after puberty provided the girl is in good health. The husband is said to commit a great sin if he fails to cohabit with his wife after each and every monthly course. But the *Gavana* generally takes place after 3 or 5 years.

9. Yes, if the girl is in good health. If not then after 3 or 5 years after Gavana the time is fit for consummation.

10. Not before 15 or 16.

11. Not in my knowledge, but it is likely to do some harm before physical development.

12. Yes. In cases of ill-health.

13. Hardly any.



14. Yes. Mothers of twice-born Hindus in chief are very fond of early marriage of their girls to safeguard their chastity. Cupid overtakes the hearts of girls in chief at an early age. Hence there is a great desire in mothers and it is considered a great virtue to marry their girls early, care being taken that the male's age must be greater than that of the girl in ratio to 1 to 1½. A girl's desire for sexual intercourse is 8 times greater than that of males. Hence by marrying girls at an early age a channel is opened for them to fix it on their respective husbands and to regulate it nowhere else. Their pleasure lies in expectation for 3 or 5 years more after which Gavana should take place. A great care is taken in this country about the purity of blood hence there are great injunctions of Shastras.

15. Yes. The keeping of permanent registers of births and deaths.

16. If it is raised to 16, it will certainly minimize the difficulties.

17. No. The sentences prescribed are enough.

18. No.

19. Cannot.

20. I am in favour of both legislations but the points mentioned in answer 14 should be kept in view.

21. I am in favour of reforms if they are in keeping with our Shastras. If not, they shall certainly be reforms.

**Written Statement, dated the 14th August 1928, of Mr. PHUL SINGH MUKHTAR, Collectorate, Saha anpore.**

1. There is no apparent dissatisfaction, as people in this country meekly submit to the law of the country. But there are unmistakable signs of dissatisfaction among a class of people, who are in a position to understand what law is really meant for.

2. I think an advance on the present law is highly essential in the interest of the people of this country. The present age of consent is too low, and the general conclusion to be drawn is, that law does not think it harmful for a girl to give her consent at the age of 14, a conclusion which, in my opinion, is horrible indeed.

3. Though the rape cases are not too frequent in this part of the country, yet they occur in good numbers and some of these cases do not even come to court, owing to the reluctance of the girls and their relatives concerned, and various other causes. The amendment of law made in 1925 had very little effect in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purpose, owing to the unsurmountable difficulty of finding out the exact age of the girls concerned. I will later on make some suggestions which I hope will minimise this difficulty to a great extent.

4. In my opinion the amendment of 1925 raising the age of consent within the marital state of 13 years has not achieved the object with which it was enacted in either of the three ways, owing to the general ignorance of the masses. I think this time the change in law should be proclaimed in such a manner, through village patwaris and headmen, so that every one must know with what view these amendments are being made, and authorities should be asked to take proper notice of the breaches, so that the amendment in law should have the desired effect.

5. In our part of the country girls generally attain puberty at the age of 14 or 15. In lower castes, girls attain a bit earlier.

In our parts of the country people generally take to cohabitation soon after the marriage, irrespective of the fact whether the girl has attained puberty or not; and whether she has completed her 13 years or not. Such cases seldom come to court, owing to the collusion of all the parties concerned.

7. In my opinion the early marriage now-a-days are not due to any religious injunction. As far as I am aware, there is no authoritative injunction, worth

the name ; there is no penalty for its breach. Hindus, of every shade of opinion, look to the Vedas as their holy book, and the Vedas proclaim that the minimum age of the girl should be 16 at the time of her marriage.

8. *Gaon* ceremony is usually performed in our part of the country. It is usually performed one or two years after the marriage. It generally takes place at the age of 13 or 14. But as it entails extra expenses on the parents, this ceremony is now rapidly going out of practice.

9. In my opinion the mere attainment of puberty by a girl is not sufficient indication of her physical maturity to justify consummation of marriage. I think a girl is not physically fit for cohabitation until two years after the attainment of her puberty. I fix 16 years of age as the minimum for consummation of marriage, when a girl's physical development may be considered to be enough to justify such consummation without injury to her own health, and that of her progeny.

10. In my opinion, in India, a girl at the age of 16 years should be considered to be competent to give an intelligent consent for cohabitation with a due realization of consequences.

11. As a secretary of the Arya Samaj, I have had the advantage of coming across some girls of 13 and 14, having infants in their laps. I had particularly noticed that the girls were entirely reduced to skeleton and looked altogether pale, their infants sharing the same fate.

12. I am strongly of opinion that early consummation and early maternity is chiefly responsible for high maternal and infantile mortality, and for more than half of house-hold calamities of the present day.

13. There are apparent signs of development in the public opinion in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of law in 1925. I think it is generally and is felt by every one who has the compacity of forming an opinion.

14. Certainly ignorant women favour the idea of early consummation of marriage for their children. But the reverse is true in the case of educated ladies. The attitude of the former is due to their ignorance of the subsequent consequences. They are generally led astray, by a false desire to see their grand-sons and grand-daughters as soon as possible.

15. I am aware that courts have had to experience the numerous difficulties in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. I beg to lay the following few suggestions that would, in my opinion, minimise these difficulties to a great extent :—

(a) That the death and birth registers should be safely kept at least for 25 years.

(b) That a year after an entry is made in a birth register, a responsible police officer should verify the entry, and should enter the name of the child ; and note whether the child is the first, second, third, or fourth issue of her parents. Columns should be provided in birth registers for such entries.

(c) In death registers, a column should be provided to note the name of the deceased, and also there should be a reference to the corresponding entry of the birth register.

In my opinion, if this is done, there would be no difficulty in finding out the exact age of a girl, when any dispute arises as to her age.

16. No.

17. I would separate the extra-marital and marital offences into different offences, and I am in favour of retaining the maximum sentences given against Section 376 and 376A.

18. In my opinion marital offences should be tried with the aid of a jury, consisting 3rd of the caste-fellows of the accused.

19. I would suggest that in marital offences the investigations should be carried with great caution, and unless any independent female neighbour or female doctor

should testify that there are reasonable grounds to proceed, the case must not proceed at all. The powers of the police should be curtailed in these cases, so that they may not haunt each and every respectable house. The real remedy lies, I may be allowed to submit, in the prevention of marriages before the age of consent.

20. I think the legislation fixing the minimum age of marriage, is much more effective than the penal legislation fixing a higher age of consent for marital cases. There is very strong public opinion in favour of the former proposition.

21. I think penal law brings about a thing more rapidly than progress of social reform by means of education, etc. There is no doubt that social propaganda is also beneficial, but along with it, the law of the land should also assist the social workers.

**Written Statement, dated the 10th August 1928, of Mr. M. Ali Ausat, B.A., LL.B., Addl. District and Sessions Judge, Aligarh.**

1. Medical science is not as yet so complete as to find out clearly whether a girl is above 14 or below 14 or is above 13 or below 13. The difference is so very small that it is hardly appreciable by any expert. If there is a girl of 10 or 11 years of age or say 12 years of age then an expert can easily say that she is below 14, but where a girl is above 13 or below 14 it becomes sometimes very difficult for an expert to say that the girl has not crossed the age of 14. In my opinion the proper course is to raise the age of consent in the case of unmarried girls to 15 years and in the case of married girls to 14 years; so an expert can easily find out whether the girl is above 13 and below 15 in the case of unmarried girls, though some difficulty will arise in the case of married girls whether the girl is above 13 and below 14 years. Certain cases have come before me in sessions in which I have experienced great difficulty in finding out the age of the unmarried girl between 13 and 14 years of age. The law requires that in the case of an unmarried girl her age should be below 14 years. Your amendment of the 5th clause of Section 375 shows that you propose that the girl should be under 16 years of age. That is a good proposal and I would heartily welcome it, but I think the country is not yet so advanced and after some more experience it may be raised to 16 years.

2. (i) The law as it stands at present sometimes fails to protect immature girls and as already said in my answer to question No. 1, the age of consent should be raised to 15 years.

(ii) My answer to the first clause covers the answer to the second clause and I would propose that the age of consent should be raised to 15 years.

3. These crimes have very much increased in recent years, especially in the western parts of the province. The reason is not far to seek. It appears that the Punjab has been badly affected by plague in years past and many women have died; consequently Punjab, Jats and other class of people are in much need of wives. People of this province carry on regular trade in Delhi, Lahore and Hathras in the Aligarh district. They entice away girls of 10 or 12 years of age of low class people who are generally uncared for, and take them to these places and there they are put up as girls of high caste and are given in marriages. Such cases are of frequent occurrence, especially in Aligarh and Cawnpore districts. The raising of the age of consent to 14 has succeeded very little in preventing such crimes, but I cannot say definitely whether it has not succeeded in reducing these crimes. I would propose that the age of consent should be raised in the case of unmarried girls to 15 and in the case of married girls to 14 years. There is one further difficulty in the matter. The rulings at present are that the offence of kidnapping is not a continuing offence; as soon as the girl is taken out of the custody of the lawful guardian by one person and is then made over to another person for the purpose of a bargain, the other person is not guilty of kidnapping. I think an amendment should be made in sections dealing with kidnapping in the Indian Penal Code and

the person who subsequently knowingly takes away the girl should be also deemed guilty of the offence of kidnapping or abduction as the case may be.

4. It is very difficult to say whether the raising of the age of consent within the marital state to 13 years has been effective because a stranger can hardly know what happens inside a house. Such cases seldom come to light. Only very few cases that can be counted on fingers have come to our courts. Public opinion is still among the lower classes quite dormant in this respect. Parents of low classes are always anxious to get their girls married as soon as possible and generally such marriages take place at the age of ten. The evil generally prevails among the Hindus though low class Mohammedans are not free from it. It is possible that with the spread of education and light this evil may be eradicated but it is a question of time and at least it will take 20 years before public opinion can be stimulated in this direction. The proper course would be, in my opinion, to postpone the age of marriage to 15 years in the case of girls and to 18 years in the case of boys and to make a penal provision for the same. There will be some out-burst of feelings among the orthodox section of the Hindus and among the low class people but it will die soon. The system of Satee was also deeply in vogue among the people but once the law was passed it has been abolished altogether so to say. It is really a pity that immature girls at the age of 13 or 14 years are married and the marriages are consummated by foolish husbands. The result is that the progeny by such union is always weak. That is the cause of the great infantile mortality. Once a girl is married it is difficult to postpone the consummation of marriage. So it is better to cut the evil at the root by making it penal for a man to marry a girl below the age of 15 years. It is true that the registration of births and deaths in this country is not made in an effective manner. I think steps should be taken also in that direction and a permanent register of births and deaths should be maintained by each patwari. With such register it will be easy to determine the age of a girl and the expert opinion of the medical man coupled with the register will make it very easy for the Crown to prosecute such men who transgress the law.

5. Girls generally in this part of the country attain puberty between the age of 14 and 15 years. No doubt in those communities which are rich as the girl is properly nourished she sometimes attains puberty at the age of 14, but hardly before that age.

6. I have already said that it is very difficult to find out this point because the girl after marriage generally goes to her husband's place and only the inmates of the house can know about it. Very few cases have come to court about such girls.

7. The common belief is that as soon as the sign of puberty appears, viz., monthly course begins, the marriage should be consummated. I am not versed in Shastras and so I cannot give an opinion on the point whether there is any religious injunction to that effect. But having regard to the welfare of the girls and the general welfare of the public it is high time that if there be any such religious injunction it should be abrogated.

8. *Gaona* ceremony is generally performed in this part of the country. Before *Gaona* a marriage is seldom consummated. There is no hard and fast rule that *Gaona* should be performed after the attainment of puberty. Among low class people whether Hindus or Mohammedans *Gaona* ceremony is performed while the girl is even 11 or 12 years of age and has hardly attained puberty.

9. I am not an expert in this matter, but I must say that the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. So far as I know a girl generally attains puberty in this part of the country just at the age of 14 years. I would consider that physical development to justify consummation without injury to the health of the girl and that of the progeny can only be attained at the age of 15.

10. It is very difficult to say in the case of girls of low class people when they can give an intelligent consent to cohabitation, but in my opinion a girl is naturally shrewd and she can be expected to give an intelligent consent only at the age of 15 years.

11. Many such cases have come to my knowledge but I cannot give exact details. Such cases have come to my knowledge only in the case of married girls of good families and so it is difficult to know the injury sustained by such girls, but I have seen that their husbands have always been consulting doctors after doctors about the health of their wives.

12. I am emphatically of the opinion that early consummation and early maternity are responsible for the high maternal and infantile mortality. I have often seen that children of immature girls are generally of poor health and consequently their intellectual development is also weak.

13. There is no doubt that there is a marked development of public opinion among the educated classes not owing to the amendment of the law in 1925 but due to the writings and lectures of reformers, but this wave has hardly touched the ignorant masses.

14. Women of low classes generally favour early consummation of marriage for their children, but such is not the case with high class people, especially among the Mahommedans. I have little experience of high class people among the Hindus on this point.

15. I have already expressed the difficulties in determining the age of girls in the case of offences under Sections 375 and 376 of the Indian Penal Code and I have suggested the measures which will minimise these difficulties.

16. This is covered by my answer to question (1).

17. I would propose no change in the law as it stands as to the measure of punishment in extra-marital and marital offences. Education and public opinion will make the husbands realise the pitiable position into which they put their wives by early consummation of marriage.

18. I would propose that in the case of offences within marital state the trial should take place in camera and public should not be allowed to watch the trial. This would make the girl disclose her pitiable condition more effectively and it will make the husband also penitent.

20. In my opinion legislation fixing the minimum age of marriage is likely to be more effective than penal legislation fixing a higher age of consent for marital cases. The public would hardly appreciate any of the alternatives.

21. Social reform by means of education and social propaganda would hardly be effective in mitigating these crimes. I would prefer to rely on the strengthening of the penal law to secure the object in view.

### **Written Statement, dated the 8th August 1928, of the Bar Association, Mainpuri.**

In reply to your letter of the 26th of July 1928, I herewith send to you a reply to the questionnaire of the Age of Consent Committee. These replies are the considered opinion of the members of our Bar Association and were passed at a specially attended meeting of the association held on 2nd August 1928. We all wish that the age of consent, once for all, be fixed at 16 years in all cases and 14 years in marital cases.

1. Yes.

2. (1) None.

(2) (a) Because there are a number of cases in which girls give consent without fully realizing the consequences.

(b) Because it has now been almost all over the world admitted that girls, before the age of 16, are immature both physically and mentally and hence in Section 361, I. P. C., the age is 16 years and in some other cases it has been even raised to 18 years (366A, I. P. C.).

3. The crimes of seduction or rape are sufficiently frequent in this part of the country. The time since the amendment of 1925 is made, has been so short and the amended age being raised only by one year which is also short, that no appreciable results can be ascertained yet. As to measures to make it more effective, we suggest the raising of age to 16.

4. No definite results can be shown for the shortness of time since the amendment.

(1) Probably not.

(2) Public opinion has certainly been stimulated to some extent.

(3) Some marriages are postponed beyond 13 years but they can be attributed more to the stimulation of public opinion brought about by social reform propaganda. As to steps towards making the law effective we propose that—

(a) Mr. Sarda's bill as amended by the select committee be passed.

(b) Age of consent in marital state be raised to 14 years.

5. About 14 years is the usual age of puberty for all classes.

6. (1) Not common.

(2) Frequent.

(3) Seldom.

No marital case has come to Court. Some non-marital cases do come to Court.

7. No religious injunction rules over this part of the country in this respect.

8. *Gaona* is usually performed and mostly coincides with consummation of marriage. It is usually performed after the attainment of puberty.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Consummation before 2 years after the attainment of puberty does great harm to the physical development of both the girl and her progeny. Sixteen is the proper age for consummation and to avoid injury to the girl and her progeny.

10. Not before 16 years.

11. Ordinarily it does harm to the physical development, but the question refers more to doctor's professional experience.

12. Early consummation and early maternity are mostly responsible for high mortality, maternal and infantile both, and does hinder the physical and intellectual progress of the people.

13. Certainly public opinion has recently been more developed in favour of raising the age of consent to 16 years in non-marital and to 14 in marital cases. It is general.

14. No.

15. There are difficulties in ascertaining the age. Mostly doctor's evidence is acted upon.

(1) X-ray examination may be encouraged.

(2) Birth, death and marriage registration should be put on more satisfactory lines.

16. The raising of age to 14 in marital cases and to 16 in other cases will minimise the difficulties to a great extent for according to books on medical jurisprudence ages of children up to 13 can be given with more certainty on the basis of eruption of teeth.

17. Yes. The punishment for extra-marital offences should be as provided already.

As to marital offences if the girl is below 12 the same punishment as above, and between 12 and 14, 2 years.

18. The present provisions as to trials in the 2 cases are proper, and should be maintained. There should be a difference in the 2 cases both in respect of investigation and trial.

19. We do not deem any safeguard necessary and cannot suggest any.

20. We think a penal legislature fixing a higher age of consent will not be more effective than fixing a minimum age for marriage. Public opinion in this part of the country will support the fixing of minimum for marriage.

21. Legislation is essential and is the only means in the present circumstances to bring about the desired reforms. Education as it is has done little and social propaganda is almost without sanction and only creates public opinion but is of no use in affecting practice.

**Written Statement, dated the 28th July 1928, of Hon'ble Sir LOUIS STUART, Kt., C.I.E., I.C.S., Chief Judge, Chief Court, Oudh.**

1. I do not consider that there is any general dissatisfaction in these provinces with the state of the law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code. The large mass of the population as far as I can see are perfectly ready to leave matters as they are. It is a question as to whether they will accept with satisfaction any alterations even though they are desirable alterations proposed by social reformers.

2. I am not in a position to answer this question. I should require to hear a very great deal of evidence before I could form an opinion on it.

3. I do not think that crimes of seduction or rape are frequent in Oudh. I see from the note on administration of criminal justice that there were only 54 offences of rape reported in 1926 and 67 in 1927. This is for a population of twelve millions. It is extraordinarily difficult to guess how many cases of rape there are in the villages which are not reported. I think one may hazard an opinion that cases of rape upon little children are usually reported, but there is every reason to suppose that cases of rape do occur upon adults which are not reported owing to the fear of disgrace and the possibility of the victims and their husbands losing caste if the truth is known. I do not think that the amendment of the law made in 1925 has had very much effect one way or another in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes. In regard to the question of seduction there is no doubt as to the fact that there is a certain amount of traffic in women in this province, but I do not think that the evil is as great in this province as it is in others.

4. I have no knowledge on this point.

5. I should not like to offer an opinion upon this point. Reliable opinions could be obtained from lady doctors.

6. I have no materials on which to answer this question.

7. I have no information on this point.

8. I am given to understand that the ordinary rule amongst Hindus in Oudh is that the *gaona* ceremony takes place at a very early age but that the girl does not usually go to her husband until she has attained the age of puberty.

9. I can express no opinion on this.

10. I can express no opinion on this.

11. I have no knowledge on this point.

12. Speaking generally, I should certainly consider that early consummation and early maternity are responsible for high maternal and infantile mortality and that early consummation and early maternity must affect vitally the intellectual and physical progress of any people. But this is a point also on which the opinion of a good lady doctor would be very much more valuable than mine.

13. Not to my knowledge.

14. I do not know.

15. Not as far as I knew.

16. I cannot say.

17. I would certainly separate extra-marital and marital offences into different offences. I should leave the punishments as they are at present.

18. I see no reason for any alteration in the procedure.

19. I do not suggest any safeguards beyond those existing at present.

20. I am not sufficiently in touch with public opinion on the subject to answer this question.

21. I do not think that mere strengthening of the penal law will secure the object in view. A great deal may be done by education and social propaganda but education towards this object and social propaganda have hardly so far been given an efficient trial to justify a conclusion as to their probable effects.

**Written Statement, dated the 10th August 1928, of Mr. GAINDAN LAL, Advocate, Fatehgarh.**

1. Yes, there is dissatisfaction. The age given in the sections is too low for the girl to give an intelligent consent. At that age the girls do not understand the consequences of the consent.

2. (1) My answer to the question No. 1 covers the answer to this question.

3. Crimes of rape or seduction are not frequent in this part.

No. To make the law effective I would propose to raise the age of the girl to 18 in Section 361, I. P. C., in place of 16.

4. No, it has not. 15 years should be the age at which the girls should be married.

5. Fifteen years is the usual age at which girls attain puberty.

6. The answer is in the negative.

7. Yes. There is a book called Shighra Bodh which prescribes that parents should not see their girl at their house after 10 years and if they see her unmarried at that age they would go to hell. But this is very seldom followed now except in the case of one or two lower castes who are mostly uneducated.

8. Yes. *Gauna* generally coincides with or is anterior to the consummation of marriage. Yes, generally after the attainment of puberty.

9. No, not in all cases. At the age of 16 girl's physical development is considered to be enough to justify consummation without injury to hers or her progeny's health.

10. At the age of 18 she will be competent to give an intelligent consent. This is the age of majority also under ordinary law.

11. I have seen a case in the Judge's court here in which cohabitation was had with a girl of 12 and the person of the girl was very much injured.

12. Most certainly. Yes.

13. Yes, there has been a development of public opinion especially within the last two years.

14. Yes, they do but mostly in uneducated classes.

15. Yes, there is difficulty in determining the age of the girl.

The rules about the registration of births should be made more stringent and complete and the entries should be carefully scrutinized.

16. I do not think so.

17. They should be separated. In the case of marital offence the offenders should be treated leniently with a sentence of fine only and the sentence in extra-marital cases should be maintained as it is at present.

18. The trial of marital cases should be in camera and under no circumstances open to the public.



19. None.

20. Fixing of minimum age would be the most suitable solution and the same would be in consonance with the public opinion.

21. Social reform by means of education and social propaganda would be preferable.

**Written Statement, dated the 2nd August 1928, of Mr. BHIM SEN,  
 Computer, District Board, Jhansi.**

1. Yes.

2. (2) Yes.

3. Yes.

4. (1) No.

(3) No.

Social reform by means of Brahmacharj education.

5. Flesh eaters above 12 years.

Non-flesh eaters above 14 years.

6. (1) No.

(2) Yes.

(3) Yes.

Very rare.

7. After puberty.

8. Yes. After puberty and as circumstances allow.

10. Depends on constitution and health.

12. It is very seldom, chief cause of infantile mortality is fast multiplication, i.e., issues after each eleven months.

13. Yes, but not in general.

14. Yes.

15. Yes. Birth register should be kept correctly.

16. No.

19. By striking off portion which I have bracketed with red ink.

21. Not agreeable. Prefer by means of Brahmacharj education.

NOTE.—1. Unnatural intercourse like sodomy, masturbation and illegal connections will rapidly increase if prohibition of early marriage is enforced by law.

2. There is nobody in the world, who has a little sense, can spoil his own wife by doing cohabitation when she is not fit for that purpose. And if anybody do so, he will have to suffer naturally himself, therefore there is no necessity of retaining the portion I have bracketed and strengthening it by provision of Section 376A. If the Article 376A has been passed you will soon find several innocent persons be accused, though they may be released by a Magistrate but up to this stage there will be well plundered by expenses of lawyers and court expenses, etc.

**Written Statement, dated the 4th August 1928, of BABA KARTAR  
 SINGH BEDI, Rais, Hardwar.**

1 and 2. The Sections 375 and 376 are quite unsatisfactory, and public in general dislike these two. In my opinion the age should be fixed, before which none should dare to perform the marriage ceremony of their children.

In these two abovementioned sections where the age in the marital state is 12 years, there is punishment of transportation for life, and in case of 13 years, 2 years' imprisonment with fine.

I am wonderstruck to note the abovementioned part of the law. As it is a difficult job for a wife, whatever her age may be, to withstand and impute her husband in the court, because she is afraid of the consequences, which she may have to deal with, as she is to pass her whole life with the man. On the other hand shame is the other obstacle in her way. She will bear the whole panic and botherations on her body, but she won't go to court, and brand her husband as a criminal. One in thousand may be of such characteristic; who may call her husband to court and make him a criminal.

Hence age for marriage should be one and lawfully fixed and if anyone violates the law. If the boy or bridegroom is not a minor, he should be called to court and should be dealt with as a criminal. In case the boy is minor, his parents and her parents should be punished.

3. Crimes of rape and seduction are heard seldom, but the crimes of Section 376 are numerous, but they do not go to court, reason is given in my reply to former questions as the marriage is held before the girl reaches puberty. It is seldom seen that girls before 12 are married. And after marriage boy and girl are both anxious to meet hence they can't wait.

The amendment of law made in 1925 has not succeeded in preventing the rash cases in marital state as well as outside it.

The amendment has no effect upon the cohabitation of girls within the prescribed age, as they are married, and hence they even can't speak a word about it, on account of shame and being afraid of the consequences which may come out. Hence it is not a good law and system. The age should be fixed.

5. The usual age at which girls get their ripe age is fifteen years. It differs in different classes of people, in accordance with the part of the country in which they reside.

6. It differs in the separate provinces and parts of the country.

It is very often, when cohabitation before 13 should occur. But in towns, anxiety for intercourse grows in girls as well as boys just as they reach 13. Such cases are heard to have gone to courts seldom. But the cases which go to court are outside the marital state. Among the marital state, they don't go to court, to the reasons, explained in reply to question No. 1.

7. We attribute this practice, and of course from the religious point of view, we think it to be an inconsistency. It is a crime also. According to the religion, we think it to be a very bad action, though on the other hand, there is no restriction in the religion.

8. Garbhadan is performed in this country. The cases of Garbhadan before puberty are seldom in this part.

9. Yes. It is dangerous to the girl as well as to the next generation. The girls reach and attain puberty at the age of 15 or 16 years, and before that, cohabitation is dangerous.

10. Above 16 as she reaches her puberty at that age.

11. Cases of such kind are often and in small number. In my experience, I came across 5 or 6 such cases.

12. Yes. From the medical point of view, it is harmful for the health of both, mother as well as child. It also affects the character of the next generation.

13. Yes. The public opinion is that the ages should be fixed. Sixteen years should be the age within the marital state, and without the limits of the marital state, it should be 17, one year more, as these girls don't recognise and fancy good and bad.

14. The women of our country and province want the marriage and sexual intercourse to be held at the adult age.

15. No difficulties have been experienced to the reasons in reply No. 1.

The age of consent should be fixed to remove or minimise such difficulties.

16. To some extent it will effect and such cases will be often, yet to the best of my knowledge I will give my opinion to fix the age to be 15 or 16.

17. Marital and extra-marital state cases should be classed differently. Such crimes, and offences which should be within the marital state, should be punished with an imprisonment of two years or fine, and without the marital state, transportation for life.

18. Yes. These should be proceeded, heard and dealt with differently.

20. The fixing of the least age would be more beneficial.

21. Yes. It should be propagated through both the ways.

**Written Statement, dated the 25th July 1928, of Dr. S. H. COMMIS-SARIAT, F.R.C.S.I., S.M.O., W.M.S., Superintendent, Medical Aid to Women, United Provinces.**

1. Yes, as is evident from the resolutions passed recently by different societies,

2. (1) I do not see any justification in retaining the law of the age of consent as it is at present.

(2) At the tender age of 14 years girls are unable to realise the consequences of sexual intercourse and not being able to form mature judgment are apt to be deceived by designing people in giving the so-called consent; hence it is very necessary to raise the age of consent to 16 years.

3. I have no personal knowledge about this.

4. I have no personal knowledge about this.

5. The usual age at which girls attain puberty is 14, in some cases it may be 13 or 15.

Yes—I think so.

Social environments certainly do play an important part in this connection.

6. I have no personal knowledge.

7. I have no idea about religious injunctions. Even if there are any I do not think that the laws made several hundred years ago should have the same force now.

8. Yes—mostly among the Hindus. Generally immediately on attaining puberty.

9. Not at all. The best age would be 18 years.

10. From 16—18 years.

11. I have not kept records, but I have come across mostly such cases when the girls before attaining puberty have given birth to children and consequently ruined their own health in general and that of their children.

12. Yes—certainly. Early consummation on account of early marriage is one of the chief causes of ill-health of children and mothers and high infantile mortality.

13. I cannot say.

14. Yes, as a rule.

15. As I have not had an opportunity of dealing with such cases I am not in a position to give any opinion but I think a difficulty might arise to determine if a girl is under 13 years of age.

I would suggest the raising of age to 14 years.

16. I think there would be less difficulty in determining the age of 14 years or above.

17. I would put both in the category of the offence of rape and prescribe the same punishment.

18. No.

19. I am not competent to reply to this.

20. I would prefer the latter, *viz.*, fixing the minimum age of marriage. In my opinion it seems difficult to bring such cases before court.

21. I would rely on the strengthening of the penal law to secure the object in view but social reform by means of education and social propaganda would naturally help a great deal.

**Written Statement, dated the 13th August 1928, of Rai Bahadur RAMA PRASAD BAGCHI, M.D. (Cal.), Retd. Senior Civil Assistant Surgeon, Agra.**

(1) I think there is some dissatisfaction with the state of the law as to the age of consent as contained in Sections 375 and 376, I. P. Code.

(2) The circumstances which in my opinion justify in making an advance on the present law are as follows :—

(a) The fact that the girls are being married at a more advanced age now than in the past necessitate the protection of unmarried girls from the seduction of immoral men.

(b) The fact that girls have to be allowed more freedom than before on account of an advance in the ideas of the people regarding education and "parda" it is necessary to protect them by legislation.

(c) The girls of the age of less than 16 years are incapable of giving any genuine consent with due appreciation of the consequences thereof.

(d) In view of the fact that sexual lapses among unmarried girls of immature understanding are generally attended with very disastrous consequences, the increase in the age of consent is likely to deter the intending seducers.

(3) I do not think *crimes* of seduction or rape are frequent in my part of the country, so, I do not think the amendment of the law in 1925 has been productive of any *direct consequences*, in the matter of rape or improper seduction of girls. I am in favour of an increase in the age of consent of girls outside the marital state by the legislative enactment for the indirect influences that it produces on the people.

(4) I am of opinion that the amendment of 1925 raising the age of consent within the marital state to 13 years has been effective in protecting married girls against cohabitation with husbands within the prescribed age limit not for the reason given in clause (1) of the question but for the reasons given in clauses (2) and (3) thereof.

(5) Generally girls attain puberty in my part of the country about the age of 13. I do not think there is any substantial difference in the age of the girls of different communities in this matter of attainment of puberty.

(6) (1) No.

(2) No.

(3) No.

No, such cases do not come to court.

(7) I think the people have outgrown the stage when early consummation of marriage was encouraged with a view to obey a religious injunction. The authority for such an injunction was Smriti texts and the penalty provided for its breach was some disadvantage in the other world. The society in former days used to co-operate with these religious ordinances by punishing the delinquents by social ostracism and other penalties, which were not always quite legal.

(8) Yes, "Gaona" ceremony is usually performed in my part of the country. Consummation of marriage generally coincides with it. It is generally performed more than a year after the attainment of puberty.

(9) The attainment of puberty is certainly not a sufficient indication of physical maturity to justify consummation of marriage. Generally a girl's physical development may be considered enough to justify such consummation, without injury to her own health and that of her progeny on the completion of her 16th year, i.e., three years after the attainment of puberty.

(10) It depends to a very great extent on the intelligence of the girls, the education she has received and the environments in which she has been brought up. As, however, some age has to be fixed, I think 16 years would serve the purpose. Though I doubt that the girls in India are generally capable of giving an intelligent consent to cohabitation with a due realisation of consequences even at that age, yet I would not advocate a higher age in the present state of the society.

(11) I have had no occasion to notice such cases.

(12) I am not in a position to demonstrate the fact that early consummation and early maternity adversely affect the intellectual or physical progress of the people, though I am inclined to think that they are responsible in some cases for maternal or infantile mortality and in others for weakening the constitution of the mother and the child.

(13) I think there has been further development in my part of the country in favour of an extension of the age of consent in extra-marital cases since the amendment of the law in 1925 though I do not think the idea is a general one. It is rather confined to those large and increasing classes of the people who are advocates of female education and reduction of the rigours of the "parda" system, as also to those who keep themselves in touch with the events happening around them both in India and countries situated beyond India.

(14) No.

(15) The correct determination of the age of a girl would always be a matter of great difficulty, more specially when she is on the border line of a certain age and the question is to find out whether she is on this side or that side of it. I would suggest that registration of births of children, more specially of girls, be made of universal application and that a column be added in the birth registers giving their names as well. As children are not named in many communities till several weeks or months have passed since their birth, it ought to be made obligatory on the parents or guardians to supply the requisite information within, say, a year of the birth of the child. This will in most cases enable the court to fix the age with much greater certainty.

16. I do not think so. For reasons *vide* reply to the above question.

17. I do not think it is necessary to separate extra-marital and marital offences into different offences. If illicit married intercourse is to be discouraged and if it is supposed that the characterisation of such intercourse as rape is likely to dissuade silly husbands from committing the offence for the fear of bringing themselves under greater odium on account of the name of the offence, it is all the more reason for maintaining it. The maximum punishment already provided need not, in my opinion, be disturbed.

18. Yes, I think trial in the case of offences within the marital state should invariably be with the aid of a jury. I would further suggest that in the case of sexual intercourse by a man with his wife not being under twelve years of age, the offence should be triable by a Magistrate of 1st class instead of by a court of session, Chief Presidency Magistrate or District Magistrate.

19. This is rather a technical question. I have no suggestion to make.

20. No. I am inclined to think that legislation fixing the minimum age of marriage would be more in consonance with public opinion in my part of the country.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view rather than on the progress of social reform by means of education.

and social propaganda. The progress of education in the country is very slow and if social reforms had been allowed to be introduced only when the whole population were educated to articulately and intelligently express their demands, the customs relating to "Suttesism" and killing of daughters would probably have still continued in the land with innumerable adherents to these inhuman institutions, and laws relating to widow marriage, freedom of religion, special marriage and age of consent would never have been introduced by now. Child marriage has been abolished in Baroda by a stroke of the pen though we do not know how many decades it will be before the pernicious system is completely abolished from British India, if only it is proposed to wait till such time as the whole people should as a body express themselves on the subject.

NOTE.—I am opposed to the introduction of Section 376A for the reasons given below :—

1. There is no good reason for calling an intercourse with a wife of more than 13 years and less than 14 years of age as illicit married intercourse and with a younger wife as rape.
2. I do not think it will serve any good purpose by introducing a rule for punishing intercourse with a wife of more than 13 years. If the people in general want that such intercourse should be discouraged it would be far better to introduce a law fixing 14 as the minimum marriageable age for a girl.
3. It is absurd to provide the same penalty for having intercourse with a wife who is considered in law incapable of giving consent and a wife who is capable of giving such consent but has not attained a certain age.
4. Since the age of consent in the case of a wife is 13, it is silly to introduce inconsistency by punishing a person who has had sexual intercourse with his wife, who is capable of giving consent and who has given consent.

**Written Statement, dated the 13th August 1928, of PANDIT BHAGWAN DAS BHARGAVA, Assistant Sessions and Subordinate Judge, Meerut.**

1. So far as the educated and thinking public is concerned there is certainly dissatisfaction with the state of the existing law. The uneducated and the village people are not aware of the law but they also equally strongly feel for the protection of the chastity of their girls from evil-minded persons, and feel the sting most if they find that a culprit escapes conviction merely on the ground that their raw and inexperienced girl of 15 or 16 happened to give her consent to co-habitation.

2. I am in favour of making an advance on the present law and increasing the age of consent. Girls in this part of the country up to a certain age which I would fix at 16 have no independent judgment of their own and depend for guidance on their relatives or guardians. They have no experience of the world and if they happen to come in contact with unscrupulous persons they easily fall a prey to their machinations. This applies with greater force to those who are brought up in the seclusion of purdah. There are, of course, exceptions where girls have a highly developed sense of morality, but the question of consent does not arise in their case.

In the case of low and poorer classes of people where girls are free to move about and mix with all sorts of people they are easily tempted to give their consent to sexual intercourse without due regard to consequences.

The fact that a girl in most cases is not fit to exercise an independent discretion is a strong circumstance justifying the raising of the age of consent.

3. Yes. The crime of seduction is very frequent in the districts of Meerut and Muzaffarnagar. This is a lucrative branch of the crime and there is a regular trade in exporting girls, often of the depressed classes, to the Punjab. The percentage of cases under Section 363 and the allied sections is rather high in these districts. And there is one unfortunate feature that a large number of persons connected with the crime escape conviction. For this a defect in the law is also responsible to some extent. The offence is complete as soon as a woman is abducted or kidnapped, and it is almost impossible to prove conspiracy between the actual abductor and those who subsequently join him. An amendment in Section 366A rendering criminal any help given to an abductor in the disposal of the girl after abduction would materially help in the stopping of the traffic.

The cases of rape also often come to court. There appears to be no appreciable success in the desired line by the amendment made in 1925. The increase in the age of consent has made no appreciable difference nor are the people in general made aware of the amendment. I would suggest raising the age of consent to 16 years at the same time taking measures to make the amendment widely known in villages and town.

4. The amendment to the law has in no way been effective in protecting married girls in any of the three ways mentioned in the question. The only solution that I would propose is by making early marriages penal.

The educated public has been much agitated on the question of early marriages. A strong public opinion is forming itself against such marriages and among educated people marriages of girls are generally postponed to the age of 13 or 14. A circular of the Director of Public Instruction, Allahabad, prohibiting admission of a married boy in any of the school classes is a step in the right direction and would certainly be very effective in postponing marriages of boys beyond the age of 16. But this does not affect the large number of boys who do not go to school and for this a legislation seems to be the only remedy.

I have come across cases in which poor parents have married their minor girls of tender years simply because they could not support them. But this consideration need not count in the general good of the community.

My personal opinion is that sexual intercourse by a man with his own wife should in no case be made an offence of rape. There is no sense in providing a man with a wife, giving the two all facilities to meet in private and then asking the youthful husband to observe continence. You yourself provide the husband with all facilities for the commission of an act and when he does it you send him to jail much to the discomfort of the young wife herself. Prevention is always better than cure. Why not prevent the causes which lead to the commission of the offence.

I would, therefore, suggest that commission of sexual intercourse by a man with his own wife should not be made an offence and in order to prevent the commission of such an act marriages of girls before the age of 14 should be penalised.

5. Attainment of puberty differs in different classes of society. It comes earlier in lower and working classes of people and is delayed in higher and rich classes. The girls who have to go out for work and are free to move about attain puberty generally at the age of 13. This is so because they get early an idea of sex. Girls who are not so free do not generally attain puberty until they are 14.

6. (1) It is not common in any class.

(2) and (3) Though not common yet frequent in girls of lower castes and of lower society.

Such cases come to court only in connection with cases of seduction and abduction whether such seduction or abduction be for the purpose of sale of the girl or with any other object.

7. There is no religious injunction so far as I am aware in the Hindu Shastras for the early consummation of marriage. Some oft quoted texts refer only to

early marriages but not to early consummation of marriages. On the contrary, the following quotations, the first two from the Bharddwaj Sanhita and the third from Sushrut, will show that early consummation is strictly prohibited.

The quotations are these :—

(1) रजस्वला यदा नारी योग्यास्यात गर्भधारिणी ।

ततः कुर्वीत संसर्गं गर्भाय बुद्धिमान्नरः ॥

(मुहूर्तचिन्तामणि पीयूषधारा) ।

(2) रजोदश नतः पूर्वेनस्त्रीसंसर्गमाचरेत् ।

संसर्गं यदि कुर्वीते स नरके परिपच्यते ॥

(मुहूर्तचिन्तामणि) ।

(3) ऊन षोडश वर्षायां अप्राप्त पञ्चविंशतीं ।

यद्याहते पुमानगर्भं कुक्षिस्थ स विपद्यते ॥

जातो वा न चिरञ्जीवेत् जीवेद्वादुर्बलेन्द्रियः ।

तस्मादत्ययन्त वालायां गर्भाधानं न कारयेत् ॥

(सुश्रुत) ।

Translation :—

(1) A girl after she menstruates becomes fit for bearing a child. A wise man desiring progeny should cohabit with her after that.

(2) If any body cohabits with a girl before she menstruates he will have to lead a hellish life.

(3) If conception takes place as a result of cohabitation between a girl less than 16 and a man less than 25, the child would die in the womb, if it happens to be born alive it would not survive but if it lives it would be weak and infirm. Therefore there should be no cohabitation between such persons.

8. *Gaona* ceremony is usually performed in this part of the country. It takes place generally in the 3rd or the 5th year after marriage according to the age of the girl, but if the girl is sufficiently developed it takes place even within a year of marriage. It coincides with the consummation of marriage. A girl is not usually sent to her husband's house until the *Gaona* ceremony takes place except under special circumstances. It is performed generally after the attainment of puberty except in rare cases among poor and lower classes. There is no rule as to how long after the attainment of puberty it should be performed. It varies with the various girls and their age at the time of marriage.

No *Garbhadaan* ceremony is performed in this part of the country.

9. My answer to the first part of the question is in the negative. I consider that at the age of 16—some 2 or 3 years after puberty—a girl is generally physically developed to justify a consummation without injury to her own health and that of her progeny.

10. This is rather a difficult question. Very few girls in this part of the country realise the consequences of cohabitation before they give their consent to it. But I think intelligent consent with due realisation of consequences may normally be expected from them at the age of not less than 16 or 18.

11. From my own experience I cannot describe any such cases. But I have seen two girls who were physical wreck and I was told that that was due to early consummation of marriage and conception.



12. Yes. I consider it one of the causes, if not the only cause, of high maternal and infantile mortality and poor physical development of the people.

13. There is no public opinion on this subject among illiterate masses who are unaware of the amendment. But the educated and the thinking people are in favour of the extension of the age of consent.

14. So far as I know, they do not.

The grand mothers are sometimes inclined in favour of that opinion but among the present generation of women the feeling is steadily growing against early consummation of marriage and I know of instances in which a girl wife has been studiously kept back from her husband on account of her tender age.

15. Difficulties are often felt in determining the age of girls in such cases and the courts have to rely mostly on the expert opinion of Medical officers. But such opinion is not in all cases necessarily correct. Registers of births if properly maintained, would be very good evidence of age. But unfortunately such registers, as they are maintained at present, are in most cases worthless. The village Chaukidar who is generally an illiterate man is entrusted with the duty of recording births and deaths. He has to look for a scribe before an entry can be made and this results in making inaccurate entries, sometimes long after the incident takes place and in most cases no entries are made at all. I would, therefore, suggest a better and more effective arrangement for the registration of births.

16. I do not think so. If the age of consent is raised, say, to 16, there would be the same difficulty in determining the age between 16 and 17 as it is now in determining it between 14 and 15.

17. I have already said (*vide* answer to question 4) that sexual intercourse by a man with his own wife should not be made an offence. I would, therefore, provide no punishment for it. In cases, however, this suggestion is not accepted I would prescribe imprisonment of either description for one year, or a fine or both. But it is to be understood that imprisonment should not be rigorous unless the offender is a grown up man of mature understanding. Cases often occur in which men of the age of 40 or over marry very young girls. In such cases, however, rigorous imprisonment would be quite suitable. For extra-marital offences I would retain the present punishment.

18. In case offence within marital state is retained, I would suggest that no prosecution in such cases be started except on the complaint to a magistrate made by a person who may be interested in the welfare of the girl. In no case should the offence be cognizable by the police, nor should any body who is not interested in the welfare of the girl be allowed to make a complaint.

The present procedure for offence outside the marital state may be retained.

19. I have suggested above in answer to question 18 that offences within the marital state should not be taken cognizance of except on the complaint of one interested in welfare of the outraged girl. This ought to be a good safeguard against improper prosecution or extortion.

It cannot be gain-said that attempts would often be made of screening an offending husband, because it would be in the interest of nobody to send the husband to jail. The girl wife would not like it, nor would the other relatives of the husband who perhaps themselves might to some extent be responsible for bringing about that state of affairs. If a neighbour or an outsider is authorised to make a complaint there is every chance of giving opportunity to unscrupulous men of wrecking vengeance upon and bringing disgrace to a hostile family. In my opinion, it should be left to the sense of duty of a relative to make a complaint.

As regards offences outside the marital state very few cases arise in which an attempt is made to screen an offender, though such offences are sometimes not brought to the notice of the Police to avoid disgrace to the family and for fear lest the girl may not be able to find a suitable husband. Nor would instances be many where false charges of rape are laid against innocent persons. An instance in which such a false charge is sometimes brought will be found in case

where connections begin with the consent of parties and when that connection happens to be exposed the girl, in order to save her own skin, declares the use of force on the part of the offender. No special safe-guards are necessary for such cases.

20. I have already expressed myself against Penal Legislation. I would only add that legislation fixing the minimum age of marriage would be quite in consonance with advanced public opinion.

21. I would prefer the latter alternative.

**Written Statement, dated the 12th August 1928, of the Municipal Board,  
Muzaffarnagar.**

1. Yes. Because under the present law the age of consent has not been able to check the cases of rape and abduction. Moreover as the present limit of age for sexual intercourse by husband touches too much on the health of wives and progeny.

2. In our opinion an advance as to the age of consent must be made on the grounds mentioned in No. 1.

3. Yes. Cases are general as the law amended in 1925 has not a sufficient check on the cases of rape and seduction of girls for immoral purposes. The age limit should be advanced to 14 years for husbands and 16 years for strangers.

4. It has been effective to some extent but not much due to public ignorance of the change of law and moreover as the authorities have taken no action in this connection.

5. Generally on completion of 14 years.

6. (2) Yes. But the cases never come to the Court.

8. Gaona ceremony takes place in both the communities—Hindus and Muslims. In Hindus it takes place generally after 2 years of marriage and in Muslims it takes place at the time of marriage. It takes place after the attainment of puberty.

10. Between 16 and 17 years.

12. Yes. Early marriage and early consummation are chief causes of infantile mortality and of wives and girls.

13. Yes, and it is generally felt by the public.

15. Difficulty is generally felt in determining the age and it can be removed if much care is taken in the recording of births in the Birth Registers maintained by the Local Bodies and the Police. The register ought to be prepared with great care, as it is not done at present.

(2). By the production of horoscopes which is generally prepared in Hindus.

16. Yes, if the age of consent be raised to 14 and 16 for husbands and stranger respectively.

17. The punishment in case of rape by husband must be one year or fine upto Rs. 1,000 and in other cases the punishment as provided now is sufficient.

18. The cases against husbands ought to be tried by Magistrates of 1st class and not by the Sessions Court.

19. In cases of husband action should be taken by the Police only if sanctioned by the Magistrate.

20. The fixing of minimum age for marriage at 14 would be much more effective to check the cases of rape.

21. Education and social propaganda can serve the purpose, but at present as the masses are illiterate it will take very long time to spread education in them, therefore penal law is necessary.

**Written Statement, dated 11th August 1928, of Mr. P. K. RAY, District Judge, Agra.**

1. There is no dissatisfaction in this District.
2. The circumstances which in my opinion justify the retaining of the present law are as follows :—
  - (a) The girls as a rule are uneducated.
  - (b) It is the custom among all communities, barring very few, to marry the girls at an early age.
  - (c) It would be difficult to enforce the penal law at least in cases where the parties stand in marital relation.
  - (d) It would cause discontentment among the majority of the public.
  - (e) Morality is like to suffer.
3. Crimes of seduction and rape are not frequent in this District.
4. In my opinion the amendment of 1925 raising the age of consent has very little effect, if at all it has any. I would suggest that some legislation be taken in hand whereby the age at which a girl can be married should be raised.
5. Girls attain puberty in most districts between 12 and 14. The difference among the various communities or castes is not much. Cohabitation is common before puberty among the lower castes in Hindus as well as Mohammadans but it seldom takes place before 12. In higher castes it is generally after the girl shows signs of puberty by having her monthly courses that cohabitation takes place ; cases of cohabitation before 13 rarely come to court.
6. I am told that the Hindu community as a rule regards it a great sin not to marry a girl before she attains an age at which menstruation generally takes place. Early marriage is therefore due to such belief being prevalent among the Hindus.
 

It is only the more educated class, such as Kashmeri Brahmins, who do not marry their girls before she is 14 or even 15.

It is incorrect to say that the religion enjoins that there should be an early consummation of marriage.
7. In most districts of the U. P. and specially in villages in Hindus the ceremony of "Gona" or "Ganth Jorna" is performed as a rule. It is not anterior to the consummation of marriage, but as a rule it always precedes the consummation. No Hindu is allowed by custom to consummate the marriage before the performance of this ceremony. In most cases as long as 6 years elapse between a marriage and a "Gona" ; but the usual period is between 2 and 3 years, unless the husband and wife are sufficiently grown up, or have no other members or near relatives in their family, when an exception is made to the general rule and the *Gona* ceremony takes place within a year.
8. Yes, I think that attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. It is only in cases where consummation takes place before puberty that some kind of injury is caused to the girl.
9. I think having regard to all the circumstances a girl after she is 13 is intelligent enough to give consent.
10. I have not come across any such case.
11. Yes, I do not consider that early consummation and conception is responsible to some extent for the high rate of infantile mortality.
12. There has been no appreciable development in public opinion in districts under my charge.
13. Yes, in some communities they do cherish the idea of marrying their children at a comparatively early age.
14. I have experienced no difficulty in determining the age whenever such a question has arisen.

15. I do not think the raising of age to 14 will have any material effect in this direction.

16. Yes, I would; but I think the punishment already provided is sufficient to meet the ends.

17. I think the trial of offences within the marital relationship should only be by District Magistrates or Sessions Judges even in its early stages and that also with the aid of a jury mainly composed of Indians.

18. No.

19. I consider that if the minimum age of marriage is fixed it would be more effective, but I must concede that it would not be in consonance with public opinion in this part of the country.

20. I think that the progress is social reform by means of education and social propaganda can only secure the object in view and put the whole thing on a sound footing. Legislation I am afraid is not likely to do much good.

**Written Statement, dated the 6th September 1928, of Mr. KRISHNAPAL SINGH, M.L.C., AGRA.**

1. Yes, there is a lot of dissatisfaction with the state of law relating to the age of consent as contained in sections 375 and 376 of the Indian Penal Code among the educated classes.

2. (a) The circumstances that justify the retaining of the law relating the age of consent are :—

(1) the fear which it has on the minds of those who are likely to commit an offence of this sort.

(2) It prevents the marriages of boys and girls of tender age, even though it does not totally check it.

(3) It places an effective instrument in the hands of the executive with which to check the occurrence of rape and other crime akin to it.

(b) The circumstances which justify the making of an advance on the present law are :—

(1) That it will act as a support to the social workers in this particular field of public service for which there is an obvious need.

(2) If the age of consent is raised it will improve the physique of the race, and decrease the infantile mortality and premature decay in the youth of the country.

(3) It would allow the boys and girls—the girls specially more time and energy to be devoted to education.

3. I don't think the crimes of seduction and rape are very common in this part of the country, though the communal tension had given it a temporary stimulus it appears to be on the decrease again. I cannot say what effect the amendment of 1925 has had on it, but I believe it must have had a very healthy one.

4. (i) I cannot say.

(ii) It certainly has stimulated public opinion and encouraged public workers.

(iii) I cannot give a definite answer. I think it would be better to give some powers to approved social organisations and workers to interfere with cases where the law has been broken and bring the offenders to the notice of the courts.

5. I think it 13 or 14 years, it must of course vary with the physique and habits of the class and of individuals.

6. I cannot say.

7. Early consummation of marriage is due to a wrong notion about religious sanction as well as to false consideration of social and economic conditions.

8. Yes, it is. Yes, it does in most cases. Mostly after puberty but not necessarily I think.

9. No, I think the age of sixteen is the lowest one for the purpose.

10. It depends upon the intelligence of the individuals but, I think, they can do it between the ages of 18 and 20 years.

11. I do not know of any cases but I believe there are.

12. Yes, the early maternity is responsible for stunting of the physical as well as the intellectual growth of both the mother and the children, and is detrimental to the physical and intellectual growth of the people.

13. There is a general development of public opinion in favour of extension of the age of consent both in marital and extra-marital case; it is more conspicuous among the educated and the higher classes.

14. The old ones do, but there is a marked change even in their mentality.

15. I cannot say.

16. Yes, I think so. There will be a real difference if it is raised to 16.

17. Yes, because the temptation is greater in marital cases than in the extra-marital ones. Five years in cases of extra-marital offences and two years in the marital ones.

18. No.

19. Yes, if it is possible.

20. Legislation fixing the minimum age of marriage is likely to be more effective in my opinion.

21. Both—Social reform by means of education for those who can understand and desire to be corrected and penal law for those who are habitual criminals.

**Written Statement, dated the 13th August 1928, of Mr. IJAZ ALI, M.B.E., Deputy Commissioner, Sultanpur, United Provinces.**

1. Such dissatisfaction, as there is, is confined to a small minority of the educated classes. The dissatisfaction does not appear to be keen.

2. I think that the age of consent in the case of a stranger should not be less than 16 years as before that age the girl cannot give an intelligent consent to cohabitation with a stranger, for example, she is not sufficiently developed to know the consequences of coming into contact with a man who suffers from venereal disease. In the case of the husband it is different because he has been chosen by her parents or guardians after due care. Within the marital state it is, I think, ineffective to raise the age of consent beyond 13 years because the girl or her guardians will never bring a charge of rape against the husband and for the police or outsiders it will not be possible to know when the consummation took place and even if they knew it, they will not be in a position to know whether the girl's age was 13 or 14 years. Hindus and Muhamniadans are generally desirous of performing the marriages of their daughters before they are fully grown up. Except by the highly educated classes, it is generally considered improper to keep a girl unmarried after she has begun to have merces.

In my opinion therefore the age of consent should be raised to 16 in the case of a stranger and should remain at 13 in the case of the husband.

3. Crimes of seduction or rape are not frequent in this district (Sultanpur) I think that the amendment of the law made in 1925 raising the age of consent to

14 years has not had much effect in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. In my opinion it is impossible to suggest particular measures for prevention of rape outside the marital state.

4. I think that the amendment of 1925 raising the age of consent to 13 years has stimulated public opinion and in the case of some educated persons marriage has been put off beyond 13 years. Mere raising of the age of consent is not sufficient to protect married girls against cohabitation with husbands unless marriage of girls before the age of consent is made penal. I have given reasons in my answer to question No. 1.

5. This is a question for medical men. It is generally supposed that girls attain puberty in this district at the age of about 12. In the case of rich people girls attain puberty at an earlier age than in the case of ill-fed girls.

6. Cohabitation is common before the girl completes 13 years but such cases do not come to court.

7. I am not aware of any religious injunctions.

8. Yes, "Gaona" ceremony is usually performed here. It is generally performed soon after the attainment of puberty. The ceremony is performed at the bride's place and the consummation of marriage takes place when the bride goes immediately after the "Gaona" to the husband's house.

9 }  
to } These are questions for medical men to answer.  
12 }

13. There has been no further development of public opinion, except perhaps in the case of a few educated people.

14. Yes, women do favour early consummation of marriage for their children.

15. It is very difficult to determine the age of girls in connexion with rape cases. Medical men generally do not give definite opinion and birth registers are unreliable. In many cases birth is not reported at all. Greater attention to vital statistics and encouragement of birth certificates, etc., seem to be the remedies.

16. I do not think that the difficulty or margin of error will be materially reduced or minimized if the age of consent is raised to 14 years or above. But this is a question which medical men can answer better.

17. Yes, it is desirable to separate extra-marital and marital offences into different offences. It is very hard for a husband to be classed in the same category as a stranger or to be convicted of the same offence. The difficulty is still greater as the husband is generally below 16 years of age, does not know the law and is not in a position to know the exact age of the bride. The present scale of punishment is suitable for rape in extra-marital cases. For marital rape I would suggest a maximum of one year's imprisonment, or fine or both.

18. In my opinion the procedure of trials should be different. The marital rape should not be cognizable by the police and should be bailable. It should not be compoundable and it should be triable by a magistrate of the first class.

19. No.

20. Fixing a higher age of consent for marital cases is not likely to be effective at all. During my 25 years' experience as a magistrate I have never had before me a case of rape by a husband, though I was city magistrate in important towns. The only effective way to protect young girls is to prescribe a minimum age for marriage. In this district none of the two alternatives will be popular. Legislation fixing a higher age of consent for marital cases is likely to be the less unpopular of the two alternatives.

21. The progress of social reform by means of education and social propaganda will be more effective and useful but it will take a long time. Strengthening of the penal law by raising the age of consent will not be so effective as by raising the marriage age.

**Written Statement, dated 24th August 1928, of Lt.-Col. R. C. MACWATERS, M.B., I.M.S., Principal, Medical School, Agra.**

Limiting myself to those questions which I regard as within my province I think 9 and 12.

(1) Consummation of marriage at puberty involves a practical arrest of emotional and intellectual development at that age.

It is an established fact of modern psychology that the characteristics which make social life possible are developed from sexual impulses which are inhibited and that from the time those impulses are gratified mental, moral and social development is largely deprived of its motive power. Delay in sexual gratification is the outstanding feature of civilized life as opposed to savage and animal life and is unquestionably the basis on which civilization is built. These figures seem to me from what I have seen of Indian girls to be suitable. These are no more personal views of mine but facts known to every student of Psychology, Psychoanalysis or Sociology.

It is true that the pelvic and other bones of young Indians are fully developed and growth ceases, about 1½ years sooner than those of Europeans. Consequently if custom allowed marriage 1½ years earlier than it does in England that would be quite suitable. On this reckoning marriage would usually take place about 16 and only very rarely as early as 14 (equivalent to about 16 in England).

The physical objections are better known but I say without hesitation that the infantile mortality among mothers under 16 is very excessive—that in many cases the children are born dead or with injury to the brain, that labour is often difficult, that the first born children of immature mother are feeble and lacking in vitality and that such early child bearing is an important cause of tuberculosis among the mothers.

**Written Statement, dated the 6th August 1928, of Mr. P. M. KHAREGAT, I.C.S., Registrar, Co-operative Societies, United Provinces, Lucknow.**

In reply to your letter No. 42 A. C. C., dated July 25, 1928. I have the honour to state that in my official capacity I have no knowledge of the points raised therein. But on general grounds I am against all attempts at tinkering with the law; constant changes are bad from an administrative point of view, as the result is that people do not know exactly where they stand. I therefore suggest that ideas of social reform should be allowed to spread, and when these begin to bear fruit, it will be possible to make a drastic alteration in the law so as to make it really effective. Any attempt to raise the age for sexual intercourse from 13 to 14 will fail to have any practical result, for, where correct ages are unknown as in the vast mass of cases in the country, the difference between 13 and 14 has practically no meaning. I am of opinion that the age should be increased from 13 to 16 as soon as the people become ready for the change owing to the propaganda of social reformers. My point is that the difference must be such that people can appreciate it and not such as will merely exist on paper; in other words it is better to wait a few years and carry through a genuine and real change that will effect the lives of the people for the better rather than to compromise and improve things only on paper.

**Written Statement, dated the 6th August 1928, of Colonel R. F. BAIRD, I.M.S., Inspector General of Civil Hospitals, United Provinces, Lucknow.**

1. Yes. This is evident from the resolutions passed recently by the Legislative Assemblies and different societies for the amelioration of social conditions.

The proposed Section 376A would at present be nothing but eye wash. The proposed amendment in Section 375, however, appears to me to be sound; why should not the same figure sixteen be kept in Section 376 A?

## 2. (1) None.

(2) The present law pre-supposes in effect, that girls of 14 years are competent to decide whether or not they are fit for sexual intercourse and the bearing of children. At such an age a girl is neither physically fit for intercourse and pregnancy, nor mentally fit to decide as to her own fitness or unfitness.

## 3. I am not competent to discuss this question.

## 4. I have no personal knowledge of this.

5. I believe that the usual age at which a girl attains puberty in this country is 12 or 13 years. So far as is known, it does not differ greatly in different castes, communities or classes of society. But, there is a tendency for the attainment of puberty to be postponed amongst girls who are of weak constitution and those who are kept free from contact with sex matters. Such girls would usually belong to the higher and better educated classes of society.

6. (1) Cohabitation before puberty, I am told, is not common amongst any class though occasionally cases of rape occur from the ignorant belief that sexual congress with a child will cure venereal complaints. It also occurs after marriage where the *gauna* ceremony has preceded puberty.

(2) Cohabitation after puberty is the rule except among the better educated classes of society. As soon as puberty has been reached, it is assumed that the girl is ready for cohabitation.

(3) If puberty has already taken place, cohabitation may take place before the girl has completed 13 years.

It should be added that these customs with regard to cohabitation are gradually being replaced by more common sense customs—especially in the better educated sections of society, the tendency being now to postpone the time of cohabitation to 15 or 16 years of age.

## 7. I cannot say.

8. Yes. It is essential. It is anterior to the consummation of marriage. It is usually performed after the attainment of puberty, but the time varies considerably—sometimes immediately afterwards, but amongst the more educated classes it may be postponed for several years. Sometimes it is still performed before puberty.

9. Certainly not. The period of 4 or 5 years, after the attainment of puberty, is considered a reasonable period for the girl's physical development to arrive at such a stage as would justify cohabitation and pregnancy without injury to either the mother or the off-spring.

10. In my opinion, certainly not before 16 years of age, and preferably not until 18 years.

11. During my professional experience I have come across many cases in which cohabitation followed by pregnancy after puberty but before full physical development, has resulted in grave injury to the health of the mother and the child. Premature child bearing is a very common cause of tubercular diseases—generally of the lungs—amongst the Indian girls. I am not able to give details of these cases but any woman doctor in a large city could give details of hundreds of cases.

12. Yes. I regard it as certain that this is one of the main causes of the high maternal and infantile death rate.

13. In my opinion there has been a very decided further development of public opinion on this point since 1925. In the last few years, there has been a great awakening of public interest in the extension of medical relief to women and in child welfare work. This has focussed attention on the evils of early consummation of marriage and early maternity. It cannot be said, at present, to be general and is practically confined to the educated classes.

14. I believe that this is purely a matter of education. Well educated women naturally do not favour early consummation; but the ignorant and ill-educated woman considers that the period of puberty should be the signal for the commencement of cohabitation.



15. Great difficulties are always experienced in determining the age of girls in connection with offences under these sections. The reason for this is that registration of births is defective in this country and it is usual to depend on—

(a) the horoscope or *janampatri*, or

(b) the medical report.

(a) The horoscope is frequently unreliable and is certainly not relied upon by the courts.

(b) The medical report is relied upon by the courts but without sufficient reason—it being practically impossible to determine the age of even a young human being by the physical characteristics of the body without allowing a margin of error of several years. In European countries the margin of error is probably less because the certifying medical authority has always the birth certificate to check his conclusions. My meaning will perhaps be made clearer by a concrete example. Medical men in Europe have, let us say, come to the conclusion that the age of a child can be determined with considerable accuracy by careful examination of the teeth combined with radiological examination of certain bones, but they have been able to reach these conclusions only by taking a very large number of observations, and comparing these with the actual ages of the children as proved by their birth certificates, which are legal documents. In this country, it is quite possible to make any number of observations using the same criteria, but it is not possible to check the conclusions arrived at by comparing these with the actual birth certificate. In plain words since the age cannot be accurately known, the medical man's estimation of age can only be an intelligent guess. A child who has cut its second molar teeth is usually said to be certainly not less than 12 years of age. This assertion is probably true, but it is not possible to prove it to be true unless a large number of children, who can be proved to be of that age, are available for examination.

To remove or minimize these defects, there is only one measure which is likely to be of any service, and that is the compulsory registration of births.

16. I do not think that the difficulty or margin of error in determining the age would be materially reduced or minimized by raising the age of consent to above 14 years.

17. If the offence is marital, it seems unjust that the husband alone should be made responsible. It appears more equitable that responsibility should rest with the guardians of the child who permit the *gauna* ceremony to be performed.

18.  
to } I do not feel competent to discuss these questions.  
21 }

### Written Statement, dated the 19th August 1928, of LALA ANAND SWARUP, RAIS, Muzaffarnagar.

1. Yes, there is dissatisfaction, as the present law could not check the cases of rape and abduction. The present limit of age for sexual intercourse by husband touches much on the health of wives and progeny.

2. An advance on the present law be made.

3. Yes, cases are general in my part of the country. The law amended in 1925 has not a sufficient check on the cases of rape and seduction of girls for immoral purposes. In my opinion the age limit be advanced to 14 for husbands and 16 years for strangers. Marriage age should be made 14 and 16 for girls and boys.

4. Amendment of 1925 has been effective to protect girls to some extent but not much. The amendment of 1925 is not well known by the public especially illiterate people.

5. Generally on the completion of 13 years.

6. Cohabitation is common in some classes of people before the girl completes 13 years, but the cases never come to the court.

7. It does not exist to religious injunction as the time has changed now and the people think that cohabitation be made as late as possible when the girl is physically fit.

8. *Gaona* ceremony is usually performed in this part of the country. It is made after one year of the marriage or after three years according to the age as it is generally done after the attainment of puberty.

9. I think after 3 years of attainment of puberty a girl's physical development be considered enough to justify consummation of marriage.

10. 16 years.

12. Yes, early consummation and early marriage are chief causes of infantile mortality and of wives and girls and deteriorate the physical progress of the people.

13. Yes, it is generally felt by the public specially literate people.

14. Few old mothers wish that.

15. (1) Yes, difficulty is generally felt in determining the age. I think it can be removed if the recording of births in the birth registers maintained by the Local Boards and the Police is done regularly and with care which is not done properly at present.

(2) By the production of horoscopes which are generally prepared among the Hindus.

16. Yes, for the husbands 14 years and for the strangers 16 years.

17. I prescribe upto 2 years or a fine upto Rs. 1,000 in case of rape by husband and in other cases the same as provided in the present law.

18. All the cases to be tried by the 1st class magistrate.

19. The police, hony. magistrates and village mukhias should help the authorities in this.

20. I think if the minimum age for marriage of girls would be made 14 years it would check the cases of rape.

21. At present when the masses are illiterate it is necessary to rely on the strengthening of the penal law. Education and social propaganda, of course, can remove the difficulties but it will take centuries to spread education in the rural areas.

**Written Statement, dated the 6th August 1928, of Mr. R. G. MISRA,  
Deputy Collector, Manager, Khajurgaon (Oudh).**

1. Dissatisfaction regarding the age of consent exists among the educated class only. This class is trying to solve it by bringing about social reforms. Illiterate people are indifferent.

2. In the last few years social workers have been able to educate public opinion to an appreciable extent with the result that the age of menstruation has been affected. When marriages used to be performed at an early age and when girls used to live under circumstances that they had greater opportunities of watching sexual connections, menstruation used to take place at an earlier age. Now the difference of about a year has taken place. Early sexual connections have always been looked upon as bad but the prevailing customs are responsible for the fixation of early age in sections 375 and 376, Indian Penal Code. Now that the public opinion is more advanced and also the age of menstruation is affected an advance on the present law is justifiable.

3. Crimes connected with sexual intercourse are rarer now but rural areas have no knowledge of the law made in 1925 or any year. What has actually affected them is the little influence of social propaganda. The only course to make the law effectively known is to send clear and distinct instructions to the Patwaries and

Chaukidars of villages to announce to the villagers in their Chaupals the changes made in the law. These village officials should be clearly explained, in the Tahsils what the changes are so that they might grasp them well and explain properly. In connection with prostitutes in urban areas police should be vigilant.

4. The amendment in 1925 has not in my opinion had any appreciable effect on the public. They have simply ignored it. Even persons living in towns are not acquainted with these changes in the law. They should be announced to them by posters and meetings just as for villages I have proposed Patwaries and Chaukidars. Such information would improve their point of view on this question and be a help to social workers. When the law will be publicly known it is very likely that its non-observance would be brought to the notice of authorities by the rival parties themselves and the fear of information going out would be a great check.

Age of puberty about 14 years. No difference in it in different castes is observed.

6. There is no class here in which such cohabitation be common.

7. Early marriages are at places due to religious injunctions but I know of no authority endorsing early consummation of marriages. No Shashtras are quoted to support cohabitation at an early age. As a matter of fact even those who stand for early marriage in this part of the country are against its early consummation.

8. *Gaona* ceremony is performed here. If the girl is grown up it is performed along with marriage otherwise after some time (first, third or fifth year) consummation is not allowed before it. Generally *gaona* is performed after the age of puberty about the age of 15.

9. Attainment of puberty does not indicate physical maturity for cohabitation. In my opinion cohabitation before 16 years of age in the case of a girl is injurious to her own and her progeny's health. The reason for this is that physical development is not complete before 16 in the case of girls.

10. At the age of 16 in no case below 15.

11. I know of a case in which a girl who was a prey to early consummation of marriage sustained stunted growth throughout her life. She was a physical wreck and her children were no better. In another case of girl motherhood at the age of 14 or 15, at the time of delivery even forceps were of no use and caesarian section had to be performed.

12. Physical condition of a child is entirely controlled by the physical condition of the parents specially the mother and therefore a child born of a mother not yet fully physically developed is in most cases bound to be physically weak and this will affect his mental growth as well. The combined effect of all these is that the nation is getting physically weak and is not making satisfactory intellectual progress.

13. I have already mentioned that the law of 1925 is not known beyond a section of educated class but generally people are prepared now for a more advanced step.

14. Women generally want to see grand children as early as they can. This is their instinct not only in this part of the country but, I am afraid elsewhere also unless they are sufficiently educated.

15. In connection with sections 375 and 376 I did not experience difficulty regarding age the cases are so few. This difficulty has however been experienced in cases of kidnapping and as far as the difficulty regarding age goes it must be the same in all cases. I think birth registers should be more properly maintained so that they could be thoroughly relied upon.

16. At the age of 14 there are certain developments which medically are useful in determining the age, but I can never think that medical man could very precisely give the age may it be at any time.

17. I am in full agreement with the proposed amendment in the Indian Penal Code and the Criminal Procedure Code. This makes a difference in the case of a husband above the age of 13. Below what consummation should not be allowed. Liberty after the age of 14 in the case of a husband is lenient enough.

18. I would suggest that offences within marital state should be tried in camera.

19. I think there should be a provision that persons making false reports of these offences be punished. This would damp the spirit of reporters and so it should also be provided that if true reports would be made the reporters would be rewarded.

20. Fixation of minimum age for marriages can easily be more effective than the fixation of high age of consent for marital cases because in the former case the ceremony is a public one while the latter is a very private affair. But I do not see how the Government can fix any age for marriage with matters religious. The only course open is to fix an age for consent and to see that the law is enforced.

21. Education and social propaganda are the healthiest ways of progress and I will prefer them to legislation. The state of the country is however such that the hands of social workers would be much strengthened if they are supported by legislation.

**Written Statement, dated the 13th August, 1928, of Khan Bahadur, MOHD. ABDUL HAMID, Late Dy. Collector and Sub-Divisional Officer, Mohaba, District Hamirpur.**

1. There is no dissatisfaction with the age of consent at present because the people are not fully conscious of its disadvantages owing to their illiteracy and old customs.

2. I think that the age of consent—

(1) for married girls should continue as it is at present, on account of the prevailing marriage customs till people are more educated.

(2) But the age of consent in non-marital cases be raised to 16 in view of the general deception and overpowering means exercised by the offenders to prevail upon the intelligence of the young girls who are unable to meet them.

3. I do not think that the amended law raising the age of consent to 14 has had any effect in the matter.

4. I do not think so. I am afraid people do not go by the rulings and sections of the legislature in their domestic lives and private relations with their wives. They have got social customs and rules and family manners of life, which prevent the boy husbands having access to their girl wives. I should encourage it by social reforms and education.

5. The girls usually attain puberty at before 14 years of age in Bundelkhand but it differs in some castes and depend upon early nutrition and bringing up.

6. (1) The cohabitation in this part of the country is rare before puberty.

(2) But is common after puberty.

(3) The age is immaterial. Puberty and symptoms of puberty are the guiding factors. No cases relating to them come to court.

7. The consummation of early marriage amongst the Hindoos is due to their sense of religious obligation and injunctions. I quote the following Ashloke as an authority which is well known in this part of the country:—

“Asht barkhashch bhavē Gauri nau barkhashch Rohnim Das barkhashch bhavē Kanya tat urdhham rajaswala.”

अष्टवर्षाभवेद्गौरी, नववर्षा च रोहिणी ।

दशवर्षा भवेद् कन्या, ततः उर्ध्वं राजश्वला ॥

Free translation of which is that if one marries a girl at the age of eight he gets the blessings of the marriage of Gauri-Parvati, wife of God Mahadeo. If one marries a girl at the age of nine he gets the blessings of the marriage of Rohini who was the wife of Balbhadr, brother of Lord Krishna. If one marries a girl at the age

of ten he gets the blessings of the marriage of an ordinary Kanya or girl. After the age of 10 years a girl becomes a woman and there is no blessing at all for her marriage as she becomes "Rajaswal," i. e., beginning to have her monthly course.

Also for economic reasons for work in the kitchen and fields daughters-in-law are too early coveted.

8. *Gavna* or *Garbhadan* ceremony is generally performed in Bundelkhand. It is performed independent of the age of puberty.

9. The attainment of puberty is an indication of physical maturity unless it is defective for reasons of ill health or extreme poverty but such cases are rare.

10. At the age of 14 a girl in India is expected to give her intelligent consent for cohabitation with due realization of consequences. She is traditionally acquainted with it by the educative influence of her society in which she is brought up. But she is not capable of understanding deceitful methods adopted to influence or overpower her intelligence to accept the cohabitation by a man other than her husband.

11. No. Theoretically cohabitation with girls before or soon after reaching puberty is detrimental to their health. In this part of the country women are generally strong built and of hardy constitution in spite of their early marriages and prolific tendencies. It is mostly I think due to hard work in the fields and open air life that the ill effects of cohabitation from early age are ameliorated.

12. I do not think so. Neglect of children and proper care at the time of birth is responsible for the death of infants and mothers. There is no deterioration among the women of the Bundelkhand as referred to in the answers to question No. 11.

13. No. On account of illiteracy and general customs of society.

14. Yes. The mothers as well as fathers marry their sons early with a view to settle them in their own lifetime and be helpful to them in domestic affairs and field work. Also they marry their daughters early as they persistently desire to get rid of "watching them" from going astray.

15. No.

16. Does not arise in view of my answer to question No. 15.

17. In view of my answers to question No. 15 I will separate the extra-marital and marital offences as I have indicated in my answers to question 2(1) and 2(2) and maintain the same punishment as exists at present.

18. The marital offences should be heard "in camera" and the accused be allowed to be examined as a witness.

19. Marital offences should not be made cognizable and only entertained on complaint.

20. Both will be practically useless under the present illiterate conditions and ignorance of the people. Every day we find that even grown up men and women cannot give their correct age and leave it to be determined by courts.

21. The evils of early marriages and their consequences may only be removed in my humble opinion by social reforms and not by legislation or providing penalties. Either the pious law would become a dead letter like many Holy Scriptures or it will cause too much interference in the society and customs semi or wholly religious by the State which is unworkable and futile.

**Written Statement, dated the 14th August 1928, of Dr. M. D. WEBB, W.M.S., Principal, Women's Medical School, Agra.**

3. Particulars are enclosed of all police cases of "Rape" in the Agra District from 1923 to the end of May 1928.

4. My general impression is that I see fewer cases of recent years where married girls under 13 are living with their husbands.

5. 13 to 14 in all classes and communities.

6. { (1) No.  
(2) Yes.  
(3) No.

8. No.

9. In my opinion 15 or 16 is early enough and safe.

10. Most girls at 15 if not sooner.

11. I have seen a case of very serious tears in a child of about 7 from cohabitation.

Also more cases than I could count of gonorrheal infection.

These cases are never followed up in this country, it is impossible to say if they become sterile women.

12. (a) It is possible that the large number of cases of infantile uterus one sees are a result.

(b) The child mother cannot be expected to care for her children intelligently therefore infant mortality increases.

13.

14. Poor mothers certainly do for the sake of protection.

15. Great difficulty owing to the lack of good X-Ray apparatus.

16.

17.

18. They should be in different classes.

19.

20.

21. On education and social propaganda.

A table is enclosed giving age and number of pregnancies for labour cases here for the last five years.

Caste.	Children Between 7-10.	10-13.	13-16.	TOTAL.	Married.	Unmarried.
<b>1923.</b>						
Hindus . . . .	2	4	1	7	1	..
Mohammedan . . . .	..	..	..	..	..	..
Other Castes . . . .	1	1	1	3	..	1
<b>1924.</b>						
Hindus . . . .	..	2	2	4	1	..
Mohammedan . . . .	..	..	..	..	..	..
Other Castes . . . .	..	..	1	1	..	..
<b>1925.</b>						
Hindus . . . .	..	3	4	7	3	..
Mohammedan . . . .	..	..	..	..	..	..
Other Castes . . . .	1	1	..	2	..	2
<b>1926.</b>						
Hindus . . . .	2	1	2	5	1	..
Mohammedan . . . .	..	1	2	3	..	1
Other Castes . . . .	..	..	..	..	..	..
<b>1927.</b>						
Hindus . . . .	2	3	4	9	3	..
Mohammedan . . . .	1	1	2	4	..	..
Other Castes . . . .	..	..	..	..	..	..
<b>1928.</b>						
Hindus . . . .	..	1	3	4	1	1

## Statistics from 6th February 1923 to 5th February 1928.

## NUMBER OF PREGNANCY.

Age.	1st.	2nd.	3rd.	4th.	5th.	6th.	7th.	8th.	9th.	10th.	11th.	12th.	13th.	14th.	15th.	16th.	17th.
12	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
13	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
14	6	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
15	21	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
16	82	5	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..
17	64	7	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..
18	134	36	5	1	..	..	..	..	..	..	..	..	..	..	..	..	..
19	38	28	13	1	..	..	..	..	..	..	..	..	..	..	..	..	..
20	149	117	71	14	12	4	0	0	1	..	..	..	..	..	..	..	..
21	10	18	12	9	4	0	0	0	0	..	..	..	..	..	..	..	..
22	41	60	47	34	11	4	1	1	1	1	..	..	..	..	..	..	..
23	12	17	17	13	4	1	1	0	2	0	..	..	..	..	..	..	..
24	17	19	25	17	9	7	1	0	0	0	..	..	..	..	..	..	..
25	38	62	100	103	74	46	11	7	6	3	3	..	1	1	1	..	..
26	9	14	10	23	15	7	7	6	0	1	0	..	..	..	..	..	..
27	4	3	8	10	8	8	8	0	1	0	1	..	..	..	..	..	..
28	10	11	15	16	36	24	10	4	5	2	..	1	..	..	..	..	..
29	1	2	4	3	4	2	2	1	0	0	..	0	..	..	..	..	..
30	17	15	46	53	73	67	59	52	26	12	8	3	1	..	..	1	..
31	..	..	..	2	1	1	2	4	1	3	1	0	0	..	..	..	..
32	2	1	1	4	10	10	8	3	9	6	2	2	1	0	0	..	..





**Written Statement, dated nil, of Ch. VIJEYPAL SINGH, .B.A., LL.B.,  
Vakil and M.L.C., Prem Bhawan, Meerut.**

1. There is no dissatisfaction with the state of law as to the age of consent, people being altogether indifferent to the matter.

2. An advance on the present law may be made without any opposition in the western districts of the United Provinces, the chief reason being that the public opinion among the educated and upper classes favours such healthy legislation. Moreover early marriages are discouraged these days everywhere and those persons who commit rape outside marital relations forfeit public sympathies.

3. Crimes of seduction and rape are not frequent in our part of the country. The amendment of the law made in 1925 raising the age of consent to 14 has had no tangible effect in preventing or reducing cases of rape outside the marital state. More severe imprisonment along with whipping may succeed in having the desired effect.

4. No. The amendment of 1925 raising the age of consent within the marital state to 13 years has had no effect in protecting married girls against cohabitation with husbands within the prescribed age limit. In our provinces only 6 persons were tried before the courts in 1926 for rape by the husband, out of whom only 2 were convicted. Generally the public are unaware of these provisions of the Indian Penal Code as far as the question of husband and wife is concerned. Those persons who know the law on the point generally connive at the offence lest sacred marriage tie be broken. The only effective remedy for protecting married girls against cohabitation with husbands is Mr. Sarda's Bill which proposes to penalise child-marriages.

5. The usual age at which girls attain puberty in our part of the country is 15 years, and is almost the same in different castes, communities or classes of society.

6. Cohabitation (i) before puberty, (ii) soon after puberty and (iii) before the girl completes 13 years is found among poor classes and as many as 145 persons were tried for offence under section 376 in the year 1926, out of whom 102 were convicted.

7. The practice of the early consummation of marriage before or at puberty, wherever it exists, is due to caste customs and not to any religious injunction.

8. Nowadays among upper classes 'Gaona' or 'Garbhadan' ceremony is usually performed along with marriage ceremony and is called 'Patta pher.' Wherever it is performed after marriage ceremony, it generally coincides with the consummation of marriage.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. At least one year after puberty, a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. At the age of 16 years would a girl in India be competent to give an intelligent consent to cohabitation with a due realisation of consequences.

11. No such cases during my experience.

12. Early consummation and early maternity are responsible to a great extent for high maternal and infantile mortality as well as for vitally affecting the intellectual and physical progress of the country.

13. The public as a matter of course take no interest in such matters and consequently there will be no opposition in the public if the Age of Consent Bill is passed.

14. Yes, women among uneducated people favour early consummation of marriage and are very eager to see children born at a very early age.

17. Yes, extra-marital and marital offences should be separated into different offences and extra-marital offences should be more severely punished with rigorous imprisonment extending to ten years along with whipping which will have very healthy effect.

18. Yes, I would like to make a difference in the procedure of trials for offences within and without the marital state—those within the marital state should be tried in camera in order to preserve the sanctity of sacred marriage tie, while those without marital state should be tried publicly.

20. Legislation fixing the minimum age of marriage is likely to be more effective than penal legislation fixing higher age of consent for marital cases. The former would be in consonance with public opinion in our part of the country.

21. I would like to rely on the strengthening of the penal law to secure the object in view along with the progress of social reform by means of education and social propaganda.

**Written Statement, dated the 13th August 1928, of Rai Bahadur LALA JAGDISH PRASAD, M.L.C., Muzaffarnagar.**

1. There is some dissatisfaction among the educated classes with the present law relating to the age of consent in the sense that they believe that the age of Consent should be raised.

2. In my opinion the age of consent must be raised because the age of consent prescribed by the present law is not such at which a girl in India could be considered competent to give an intelligent consent to cohabitation with a due realisation of consequences. The consequence is that cohabitation with a girl at such a tender age as at present prescribed by law to be the age of consent, before she attains puberty and full physical development results in injury to her health and body and prejudicially affects her progeny; it is also responsible to a great extent for high maternal and still higher infantile mortality as well as for vitally affecting the intellectual and physical progress of the people.

3. The amendment of the law made in 1925 raising the age of consent to 14 years has not in my opinion succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes, because, so far as I think, the public in general knew little of the new amendment and the amended law has not in my opinion been strictly enforced and the offenders brought to book. To make the law effective the age of consent for extra-marital cases should be raised to 16 years and instructions should be issued to officers to enforce the law more strictly.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not in my opinion been effective in protecting girls against cohabitation with husbands within the prescribed age limit either by postponing the consummation of marriage, or by stimulating public opinion in that direction or by putting off marriage beyond 13. To make it effective a legislation fixing the minimum age of marriage at 14 years is very necessary accompanied by an amendment of the present law raising the age of consent within the marital state to the same level as the minimum age to be prescribed for the marriage (i.e., 14 years).

5. Girls in our part of the country attain puberty usually at the age of 14 to 15 years. This differs to some extent in different communities or classes of society but the difference is not much marked.

6. Cohabitation is not very common in our part of the country among any class or classes of people before the girl completes 13 years but is common soon after she completes this age.

7. I attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, more to custom than to religious injunction.

8. *Gaona* ceremony is usually performed in our part of the country. In the case of post-puberty marriages it coincides with the consummation of marriage but in the case of early marriages it is performed sometimes just after the attainment of puberty and in some cases before it.

9. In my opinion the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. I think at the age of

16 to 17 years a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny, or in other words about two years after puberty.

10. At the age of 18 years at least.

11. I have known of cases in which cohabitation before puberty or after puberty but before full physical development of a girl, say at the age of 18 or 14, has resulted in the girl having to bear the strain of early maternity and falling a prey to diseases and in some cases leading to her death, while the progeny of such girls seldom survives and if survives is generally very weak and diseased.

12. Yes, I consider early consummation of marriage and early maternity greatly responsible for high maternal and still higher infantile mortality and for vitally affecting the intellectual and physical progress of the people. The consequence is a progressive physical degeneration of the race and loss of power of resistance to disease.

13. Yes, there has been further development of public opinion in our part of the country in this direction since the amendment of the law in 1925. But it is confined mostly to the educated classes.

14. Women of old type in our part of the country do favour early consummation of marriage for their children. But with educated women of new light this is not the case.

15. I cannot say anything from my experience about the first part of the question. As regards the second part I would suggest that by a reference to horoscopes of the persons concerned and to birth registers which are maintained (and which in future should be more properly kept), these difficulties can, in my opinion, be minimized or reduced.

16. Yes, to some extent, because the girl will then be of a better age to give her statement.

17. Yes. I agree with the proposed amendment of Dr. Gour in this connection.

18. Yes, as proposed by Dr. Gour.

19. I would suggest a safeguard against improper prosecution or extortion of husband offenders in the case of marital offences by laying down that in such cases cognizance should not be taken by the police without the sanction of the magistrate who should first satisfy himself regarding the *prima facie* of the case.

20. No; merely a penal legislation fixing a higher age of consent for marital cases without a corresponding legislation fixing that age of consent as the minimum age of marriage will not be effective in attaining the object in view, as offenders in marital cases cannot always be brought to book. Hence a legislation fixing the minimum age of marriage is imperatively called for and will, I think, be more in consonance with public opinion.

21. I would prefer to rely both on the strengthening of the penal law to secure the object in view as well as on the progress of social reform by means of education and social propaganda, as experience has shown that the latter alone cannot achieve the object in view at an early date unless supplemented by the former.

### Written Statement, dated the 14th August 1928, of the SANATAN DHARMA SABHA, Muzaffarnagar.

1. There is some dissatisfaction with the present law relating to the age of consent in the sense that people believe that the age of consent should be raised.

2. In the opinion of my Sabha the age of consent must be raised because the age of consent prescribed by the present law is not such at which a girl in India could be considered competent to give an intelligent consent to cohabitation with a due realisation of consequences. The consequence is that cohabitation with a girl at such a tender age as at present prescribed by law to be the age of consent,

before she attains puberty and full physical development results in injury to her health and body and prejudicially affects her progeny; it is also responsible to a great extent for high maternal and still higher infantile mortality as well as for vitally affecting the intellectual and physical progress of the people.

3. The amendment of the law made in 1925 raising the Age of Consent to 14 years has not in the opinion of my *Sabha* succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes because, so far as we think, the public in general know little of the new amendment and the amended law has not in our opinion been strictly enforced and the offenders brought to book. To make the law effective the Age of Consent for extra-marital cases should be raised to 16 years.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has not, in our opinion, been effective in protecting girls against cohabitation with husbands within the prescribed age limit, either by postponing the consummation of marriage, or by stimulating public opinion in that direction, or by putting off marriage beyond thirteen. To make it effective a legislation fixing the minimum age of marriage at 14 years is very essential accompanied by an amendment of the present law raising the Age of Consent within the marital state to the same level as the minimum age to be prescribed for the marriage (i.e., 14 years).

5. Girls in our part of the country attain puberty at the age of sixteen years.

6. Cohabitation is not very common in our part of the country among any class or classes of people before the girl completes 13 years but is very common soon after she completes this age.

7. We attribute the practice of early consummation of marriage before or at puberty, wherever it exists, more to custom than to religious injunction.

8. *Gaona* ceremony is usually performed in our part of the country. In the case of post-puberty marriages coincides with the consummation of marriage, but in the case of early marriages it is performed sometimes just after the attainment of puberty.

9. In the opinion of my *Sabha* the attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. We think at the age of 16 years a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. At the age of 18 years.

12. Yes, we consider early consummation of marriage and early maternity greatly responsible for high maternal and still higher infantile mortality and for vitally affecting the intellectual and physical progress of the people. The consequence is a progressive physical degeneration of the race and loss of power of resistance to disease.

13. Yes, there has been further development of public opinion in our part of the country in this direction since the amendment of the law in 1925.

14. Yes, women in lower classes in our part of the country do favour early consummation of marriage for their children, but this practice is dying out gradually.

15. The difficulty always arises in determining the age of girls. We would suggest that by a reference to horoscopes of the girls concerned and to birth registers which are maintained (and which in future should be more properly kept) these difficulties in our opinion, be minimised or reduced.

16. Yes, because the girl will then be of a better age to give her statement.

17. Yes, we agree with the proposed amendment of Dr. Gour in this connection.

18. Yes, as proposed by Dr. Gour.

19. We would suggest a safeguard against improper prosecution of husband offenders in the case of marital offences by laying down that in such cases cognizance should not be taken by the police without the sanction of the magistrate who should first satisfy himself regarding the *prima facie* of the case.

20. No, merely a penal legislation fixing a higher Age of Consent for marital cases without a corresponding legislation fixing that Age of Consent as the minimum age of marriage will not be effective in attaining the object in view, as offenders in marital cases cannot always be brought to book. Hence a legislation fixing age of marriage is imperatively called for and will we think, be more in consonance with public opinion.

21. We would prefer to rely both on the strengthening of the penal law to secure the object in view as well as on the progress of social reform by means of education and social propaganda, as experience has shown that the latter alone cannot achieve the object in view at an early date unless supplemented by the former as the masses are generally illiterate.

### Written Statement of Senior Rani, Qila, Pertabgarh (Oudh).

1. The procedure of courts under Sections 375 and 376 of the Indian Penal Code is too public and too dilatory, an interference by the police is so much resented that this crime is hardly ever reported. Evidence in these cases can be obtained with difficulty and the physical examination and medical evidence involves so much exposure and publicity that parents and friends of the girl even hide the injury and consider it lesser evil to suffer in silence rather than bring the culprit to justice.

2. Making an advance on the present law of the Age of Consent is more than justified and has become necessary on account of the advance in education and racial consciousness and the general desire for advancement amongst the people.

The administration of law and order and continued peace in the land has in a great measure done away with the necessity of marrying of girls at tender ages so that there is naturally a tendency amongst all classes of people to advance in physical well being.

3. Raising the Age of Consent in 1925 was so little of an advance that I do not consider it has produced any direct results. It is difficult to discriminate between a girl of 12 and 14 and with the imperfect birth records it is almost impossible to say whether a developed girl of 12 is not 14 years old. Thus seduction of girls continues as before. With *Purdah* to help them it would be difficult to trace these unfortunate girls. To improve matters there should be more careful registration of births, besides a birth certificate should always be granted to be retained by every individual. There should be a panel consisting of a Board of women honorary magistrates, a lady doctor or *dai* and respectable ladies to deal with these cases wholly and exclusively.

4. The amendment of 1925 has certainly encouraged putting off marriages of girls beyond 13 in proportionate larger number of instances. Provisions of law in India have always that effect and go to form public opinion accordingly. It is impossible to check consummation in married couple. The only effective way is to raise the age of marriage.

5. In my part of the country girls generally attain puberty at 15 years old, and specially in rural tracts. In the cities and vicious surroundings girls attain puberty quicker.

6. Sexual consummation generally takes place after puberty. In some low classes of society and amongst those where girls are scarce marriage generally takes place at a very tender age, but cases against the Age of Consent are rarely brought to court. Only in those cases where there is any animosity amongst the parties that a case like this is ever reported.

7. There is never a question of religious injunction in these cases.

8. *Gaona* is generally performed in my part of the country, but the real sense of it is not understood and the practice with regard to the consummation of marriage differs in individual cases, so that *Gaona* has become mostly a ceremonial affair and does not protect a girl.

9. The attainment of puberty in no instance indicates physical maturity to justify consummation of marriage. A girl must be 16 preferably 18 before she can risk pregnancy and protect herself and her progeny from the evil consequences of the early consummation of marriage.

10. A girl in India is not competent to give an intelligent consent with due realisation of consequences before the age of 18. That they are not literate and consequently ignorant makes it still more necessary to prevent early consummation of marriage.

11. I have met with many cases where consummation before and after puberty, but before full physical development has resulted in injury to the mother, inflammation of the internal parts and disablement to follow her routine of life and household duties. Also cases where it has interfered with conjugal happiness and practically brought about separation between husband and wife. The progeny of such age is generally weak, stunted and wanting in bony development.

12. Yes. The children are shortlived and of puny health very liable to digestive troubles and the girls are prone to suffer from hemorrhage.

13. Since 1925 there has been much development of public opinion in favour of the extension of Age of Consent. This development is mostly confined to educated classes, but there has been a great extension in this opinion amongst the village folk also.

14. Women never favour early consummation of marriage in my part of the country.

15. It is impossible to distinguish between the age of 12 and 15. Their development varies so much, I would suggest proper registration of birth, granting of birth certificates and encouraging the people to keep this document as they do their documents of property. In all cases relating to age this certificate should be called for. In all cases of marriages a notice should be sent to the village elders so that this would serve in a way as if marriages were registered. It would be open to the Board of elders to scrutinise the age of the contracting parties.

16. The difficulty and margin of errors would be reduced if the Age of Consent were raised to 16 and 18 years of age.

17. Extra-marital and marital offences must be classed as different offences. The marital offence should be made civil offence punishable by heavy fines, whilst the extra-marital offence should be a criminal offence punishable by stripes, and imprisonment. The amount of punishment naturally would differ in different cases according to the extent of injury, social position of parties, and the ignorance of the individuals.

18. I have already indicated the differentiation of the two class of offences. I would only add that there should be a Board of Matrons to enquire into these cases when a report is made to them and if possible honorary women magistrates to try these cases. The trial should take place before women. The appeal may go to the sessions, but the recording of evidence should take place before women alone.

19. I am not aware of the present day safeguards against collusion in proper prosecution or extortion, but I would suggest that false charges should be made punishable.

20. In India we want both a penal legislation as well as fixing the minimum age by the legislature. Both should be the same. Of the two public opinion would prefer the latter. All marriages before 16 should be invalid, but this will not stop early marriages unless and until the Age of Consent too should be raised to 16 years in marital cases. The penal legislation would be deterrent whilst the other would only tend to increase legislation as to inheritance.

21. Education and social reforms must go hand in hand, but it would take a long time before they are effective. In India all law is embodied as a Shashtra, is considered as a religious behest and acted upon. Any thing not contained in the law and left to the sweet will of the people never succeeds.

**Written Statement, dated 21st January 1929, of Mrs. J. R. CHITAMBER,  
Lucknow CHRISTIAN COLLEGE, Lucknow.**

1. Yes.

2. (1) None.

(2) For the improvement and development of the nation, physically intellectually, morally and spiritually.

4. Yes, it has helped a little in all these three things you mention but it is not enough and therefore the request is to raise it further.

5. Eleven or twelve is the usual age in all castes and communities.

6. (1) No.

(2) Yes.

(3) Yes.

I do not know.

7. Yes, according to Hindus.

I could not tell you all in detail but there is a book written explaining it all.

8. Yes, it is performed soon after the attainment of puberty according to financial and other conditions in the family.

9. No.

10. Not earlier than 16.

11. Yes, I have seen pitiful cases in hospitals during my visits there, also in zenanas.

Details of age and injury I would rather leave to doctors.

12. Yes.

13. Yes, among the enlightened people. The ignorant need further education on the subject.

14. The same answer as that of No. 13.

16. Yes, I think in fact I feel sure that raising the Age of Consent would greatly help in this matter.

21. Both.

**Written Statement, dated 17th January 1929, of CHOWDHURY  
MUKHTAR SINGH, M.L.A., Pleader, Meerut City.**

1. Yes, all the social reformers are perfectly dissatisfied with the present law. They consider that unless all the marriages of girls before the age of 16 years are prohibited by law and made penal no improvement is possible.

2. Following are some of the circumstances that justifies an immediate advance on the present law :—

(a) The appended appendix No. 1 will clearly show that a very large percentage of infants die annually on account of the early marriages of girls in the province.

(b) From the perusal of the appendix No. 1 it will be clear that the percentage of deaths amongst the females is higher than those of the males between the ages of ten and thirty and beyond that the death rate amongst the female is less than amongst the males. This clearly shows that a large percentage of girls are effected by labour troubles and a large number of them die on account of delivery troubles. From the perusal of the same appendix we find that the number of girls

infants die less in number than the female infants. This shows that the vitality amongst the girl infant is in no way less if not more than the vitality amongst the male children. The death rate therefore is due to the cause of early marriage followed by early pregnancy. The same is practically the case in other provinces.

- (c) Deaths due to consumption and other similar diseases are daily increasing. This is due mostly to early marriage. The general health of the people is deteriorating and young males and females are both suffering in venereal diseases.
- (d) Generally girls have to cut short their educational career at the age of 13 years and thus they are not properly educated. Education amongst the girls is not making a headway on account of want of female teachers. When girls become wives they forget the little that they have learnt and become practically illiterate. Illiteracy amongst the females is the main cause of illiteracy amongst the males.
- (e) Early marriage effects adversely the morals of the people generally and the children specially.

3. We have on an average about 225 cases of rape every year. The recent change in law has not made any effect on the number of cases so far but it is too early in this short period to draw any conclusions. The present communal tension has brought to light many a cases of kidnapping and seduction and a large number of them have remained untraced.

Out of the 225 cases 87 cases on an average have remained untraced during the last twelve years in the province. This does not reflect credit on the police. The Government officials should take special care to trace such cases and the police ought to take as much interest, if not more, in the investigation of these cases as they take in political cases.

4. No. The law as amended will not make any improvement. According to the Hindu Shastras the relation of husband and wife is a sacred one and it is impossible to conceive that the relations of wife will file suits of rape against the husband. From the perusal of the last reports we find that in the Provinces of Agra and Oudh out of the total number of cases reported 14.4 per cent. have ended in conviction, 14.4 have been acquitted and 62.5 have not been tried at all. The average reports of such cases made annually comes to only 25. I cannot believe that only 25 such cases have occurred during the whole year.

Such cases only come to light either through the enemies of the accused or through those who want to make money by extortion. It is not advisable for the legislature to encourage such things in the country. Besides this the prosecution of cases of rape by husband will make the relations of the parties very bitter and bring the people into disrepute. Prevention is always better than cure and if the Government wants really to work on this maxim they should prohibit by law all the marriages before 16 years in the case of girls and before 25 years in the case of boys. It seems to me quite absurd for the legislature to enact that though the marriages may be performed at any age but the consequent and legitimate result of marriage should be delayed for a number of years. It is just like inviting the offender to commit a crime and when he does it to haul him up in the court.

5. Generally the girls attain puberty at the age of 13 years but it does not mean that they are fully developed to stand the strain of child birth nor does it mean that they have the full conscientiousness of the results of cohabitation. The development of a girl depends mostly on the circumstances in which they are brought up. The female sense is developed in the towns much earlier than in the villages on account of the society that the girls get.

6. In cases where the *gaona* ceremony takes place before the girl attains the age of 13 years cohabitation generally begins before that age sometime even before the girl attains puberty. The family after the *gaona* ceremony forces cohabitation upon the couple. Also in cases where the girls are married to people of advanced age cohabitation begins early. Seldom any case comes to court.



7. No. It is not due to religious injunction at all. The marriage ceremony clearly prescribes that the girl ought to be young when married. The *gaona* ceremony is nowhere prescribed in the Shastras. It is an after-thought to say that *gaona* ceremony is the *Garbhadhan Sanskar*. If it would have been so it ought to have been performed just on the same lines as it is prescribed in the Shastras at least in Brahman families. The institution of child marriage is due to custom and now it has become so common that people try to find out something in the old books, to support the same. I know of no family which might have been outcasted, or in any other way punished by the society for marrying their children late. There is a general tendency amongst the educated people now to marry their girls late and nobody has even objected on that score. If early marriage would have been enjoined by the Shastras some similar action must have been taken by the society which took very drastic action against those who went to foreign countries.

8. The *Gaona* ceremony is generally performed in my province. It does not take place in cases where the marriage is performed late. It is generally performed after, 1, 3, 5 or 7 years after the marriage. There are many objections against the custom of marrying the couple early and then delay consummation, out of these objections two are very important. Firstly the age of the couple is very disproportionate and on account of that a number of young boys either die or spoil their health permanently and the children got of the connection are very poor in health. Secondly if a husband dies after the marriage even without the *gaona* ceremony is performed the girl becomes a widow and generally is not married again. If this custom of *gaona* ceremony is done away with a number of girls will be saved from the miseries of widowhood.

I take objection in using the word *garbhadhan* for *gaona*. It has nowhere been so used in any of the old books not it is so used in common parlance in any part of the province. It is only a device of orthodox people to take shelter under this word. If it would have been so there ought to have been some shastric ceremony for the *gaona* and that ought to have been identical with the *Garbhadhan Sanskar*. Besides the idea in the old Shastras of the *Garbhadhan Sanskar* is very high and forces the couple to perform it at every time they cohabit and enjoin upon them to be . This is nowhere observed even amongst the highest class of Brahmans.

I have seen *gaona* ceremony performed much before the girl attains puberty. In low caste people the vice is on the increase and now they perform the marriages of their girls sometime only at the age of 6 years and perform the *gaona* ceremony at the age of 8 years.

9. No. According to Shusrut, the well known authority on Ayurveda, the consummation should be delayed at least for 4 years. Even in the case of fruit plants the plants are not allowed to go to fruit when they are young and the flowers are plucked. Unless the girls and the boys are sufficiently developed cohabitation should be made penal. We have been performing child marriages from a very very long time and so we have forced in a way the girls to attain puberty earlier than they ought to have done. If the age of marriage be delayed I am sure after sometime the girls will not show signs of puberty so early. As long as the girl is not sufficiently developed to bear the strain of pregnancy she should never be married.

10. In the Hindu society as presently constituted a girl can never be able to give her free consent before the age of 20 years. In young couple you cannot expect them to realise the consequences of marriage and specially in a society of people who feel that it is their duty to marry their children and that the children themselves have no right of say into the matter. Unfortunately instead of giving an idea of responsibility the parents take delight in keeping the couple ignorant of the responsibility and saddle them with the most responsible duty of a married life even before they come to know what has happened. The result is that a Hindu boy and a Hindu girl never realises what youth is. They generally pass from childhood to old age. To give an intelligent consent we have to change the prevalent

ideas amongst the people and then a time may come when an intelligent consent may have any practical meaning.

11. I have known a number of cases in which girls have died on account of their first delivery, there are number of cases in which health of the girls have deteriorated for ever. As a president and an old worker of the Arya Kanya Pathshala, Meerut and as a president of the Arya Samaj I know that a number of girls have died and others are suffering badly on account of the curse of this evil custom. I am afraid I can not give the details of such cases as in certain cases it entails a criminal liability and in other it affects the reputation of the people involved.

12. I consider early consummation and early maternity responsible for high maternal and infantile mortality though poverty of the people aggravates the evil.

13. The social reformer is very busy in his campaign against child marriage and the public opinion against child marriage is making a headway but his work touches only a fringe of the population. The slender resources at his disposal make the work very slow and he can seldom approach the illiterate villager wherein the evil is on the increase.

14. Yes. Specially the illiterate women.

15. Yes. Medical evidence can hardly be reliable on the point unless the difference in age be a very marked one. Oral evidence is seldom reliable.

The birth registers should be maintained in every town and villages giving the names of the children and their respective dates of births. These registers should be filled in within a month from the date of birth. If a small allowance be allowed to literate people in the village they will gladly perform this duty.

16. Yes. It will be minimised to some extent. Though nothing seems to be practicable to check the evil unless and until marriages before a certain age are prohibited by law.

17, 18, 19. I consider it to be an impossibility to check the evil by raising the Age of Consent. The relations of husband and wife will be materially effected by conviction and the society will resent the prosecutions. No safeguards will check the collusion to protect the offenders or improper prosecution and extortion. The Police being what it is to-day no improvement on those lines is possible.

20. No. The legislation fixing the higher age of marriage will be more effective. The procedure of fixing a lower age of marriage and a higher age of consent is simply absurd. This is like inviting a person to commit offence and when he commits it to punish him. People in my province will welcome the marriageable age being raised higher. The different caste societies have already passed their resolutions for raising the age of the couple. If the legislature helps them it will be considered to be a real co-operation. I know of no caste which has fixed the *Sabha* age of marriage below 13 years. All the religious prejudices which are now put against the Sharda bill have been cast aside by their own community.

Legislature is the only effective measure to prohibit such evils. The number of literate people being too small and there being no likelihood of an immediate increase I can not rely on that score. If the Imperial Government in the entire areas administered by them makes the education of children compulsory and provides facilities for adult education I shall be in favour of delaying the enactment of any law on the point. But even the Imperial Government will not do so what to say of the poor provincial Governments.

The number of social reformers is smaller still and their resources being very limited this vital question which effects the entire nation cannot be delayed any longer. I regard the early consummation to be nothing less than a process of slow and steady murder and it is the primary duty of a state to prevent it.

## APPENDIX No. 1.

## DEATHS.

Year.	Under One			1-5		6-10		10-15		15-20	
	Males.	Females.	Total.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.
1926	{ 150,514 { 210-72	{ 124,746 { 184-97	275,260 198-21	118,638 58-02	104,799 49-05	31,391 9-33	27,519 9-05	23,158 7-99	20,512 9-34	18,666 9-10	18,698 11-56
1925	{ 140,901 { 197-39	{ 119,688 { 177-47	260,679 187-71	140,000 64-36	98,110 46-76	29,790 9-39	26,140 9-60	22,161 7-64	19,314 8-74	18,318 8-98	17,704 11-06
1924	{ 165,194 { 321-27	{ 137,248 { 203-51	302,442 217-79	128,133 63-61	115,431 56-02	38,331 11-44	32,734 10-77	26,880 9-19	22,317 10-16	21,259 10-43	20,681 12-86
1923	{ 150,567 { 210-79	{ 126,427 { 187-46	276,994 189-46	88,408 43-69	80,369 38-31	29,724 8-57	27,331 8-98	21,685 7-48	18,720 8-52	16,934 8-30	16,848 10-16
1922	{ 145,928 { 204-30	{ 122,331 { 181-47	268,312 193-21	97,709 48-28	88,066 42-40	31,331 9-35	26,941 8-86	20,804 7-18	16,941 7-66	17,355 8-51	16,524 10-27
1921	{ 197,293 { 276-11	{ 171,908 { 257-90	369,131 265-81	107,493 82-77	101,784 77-111	66,080 19-90	57,245 18-83	37,938 13-09	29,391 12-92	28,359 14-15	26,576 16-51
1920	{ 184,722 { 248-43	{ 171,315 { 218-36	356,037 236-59	173,437 84-52	162,673 80-65	61,805 18-88	54,983 18-55	35,095 11-70	27,736 12-07	24,936 13-99	23,299 16-72
1919	{ 201,368 { 256-90	{ 18,272 { 242-84	..	174,237 84-91	172,920 83-18	71,828 21-94	62,155 20-97	45,164 15-06	36,589 15-92	41,015 19-50	40,473 22-92
1918	{ 147,009 { 187-55	{ 131,370 { 174-60	..	167,457 81-60	161,372 77-62	80,189 24-49	72,856 24-58	63,509 21-18	53,669 23-35	72,317 35-34	71,314 42-15
1917	{ 247,104 { 315-25	{ 218,363 { 250-22	..	182,300 88-84	170,486 86-33	52,005 15-89	47,543 16-04	31,041 10-35	27,937 12-16	28,828 12-76	25,014 14-78
1916	{ 224,735 { 286-17	{ 198,395 { 263-68	..	134,976 65-77	134,253 64-58	35,428 10-82	31,166 10-61	21,813 7-27	18,835 8-20	17,381 8-26	18,593 10-93
1915	{ 232,603 { 283-99	{ 195,095 { 259-29	..	123,512 60-19	122,680 58-72	84,620 10-57	30,470 10-28	24,405 8-14	21,205 9-23	19,054 9-06	20,990 12-39

APPENDIX No. 1—*contd.*DEATHS—*contd.*

Year.	20—30		30—40		40—50		50—60		60 etc.		TOTAL.	
	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.
1926 . . . . .	{ 45.25 11.329	{ 47.687 12.38	{ 46.832 13.71	{ 42.416 13.48	{ 47.689 18.68	{ 35.442 16.27	{ 43.953 30.75	{ 37.738 26.05	{ 70.838 66.10	{ 69.150 54.79	{ 610.233 25.65	{ 520.755 24.49
1925 . . . . .	{ 46.536 11.63	{ 47.867 12.63	{ 49.141 14.38	{ 43.239 13.74	{ 52.178 20.44	{ 38.304 16.51	{ 53.638 33.69	{ 41.536 28.64	{ 80.740 67.27	{ 68.963 54.28	{ 603.493 25.37	{ 540.755 24.12
1924 . . . . .	{ 52.921 18.23	{ 56.103 14.80	{ 54.801 15.89	{ 51.418 16.34	{ 54.890 21.47	{ 44.064 18.99	{ 53.347 35.39	{ 46.473 32.04	{ 83.180 69.33	{ 75.689 59.97	{ 881.719 28.66	{ 602.153 27.89
1923 . . . . .	{ 42.123 10.53	{ 44.097 11.63	{ 45.046 13.18	{ 40.918 13.10	{ 47.970 18.79	{ 36.053 15.54	{ 50.176 31.52	{ 38.934 26.84	{ 74.175 61.90	{ 64.340 50.98	{ 568.807 23.88	{ 493.497 22.86
1922 . . . . .	{ 45.046 11.26	{ 46.511 12.27	{ 50.325 14.73	{ 44.788 14.23	{ 55.870 21.89	{ 41.751 17.69	{ 59.829 37.58	{ 46.202 31.35	{ 85.836 71.51	{ 73.929 59.58	{ 610.933 25.64	{ 524.847 24.31
1921 . . . . .	{ 22.947 18.24	{ 75.204 19.85	{ 78.782 23.04	{ 72.497 23.03	{ 85.451 28.27	{ 65.006 28.27	{ 89.114 55.97	{ 71.401 49.29	{ 128.796 107.31	{ 112.600 89.14	{ 952.243 40.03	{ 843.302 39.06
1920 . . . . .	{ 76.849 17.79	{ 78.804 19.14	{ 79.101 22.26	{ 72.261 21.96	{ 70.504 29.09	{ 61.703 25.71	{ 76.877 48.62	{ 64.766 43.64	{ 110.073 98.09	{ 100.906 78.05	{ 918.899 37.37	{ 828.936 37.08
1919 . . . . .	{ 101.365 23.47	{ 105.050 25.67	{ 94.714 26.78	{ 89.101 27.98	{ 90.503 34.41	{ 72.397 30.36	{ 85.706 54.20	{ 69.433 46.78	{ 111.435 94.34	{ 102.429 79.84	{ 1,017.835 41.59	{ 934.327 41.79
1918 . . . . .	{ 205.390 47.55	{ 225.536 54.86	{ 189.207 47.84	{ 171.657 52.16	{ 131.815 50.12	{ 116.772 48.66	{ 97.760 61.82	{ 86.446 53.25	{ 96.543 80.80	{ 94.732 73.84	{ 1,232.200 53.07	{ 1,180.024 53.04
1917 . . . . .	{ 71.559 16.57	{ 68.980 16.76	{ 71.441 20.20	{ 61.248 18.61	{ 76.550 29.11	{ 58.534 24.39	{ 37.766 40.65	{ 59.898 40.35	{ 101.129 85.52	{ 94.180 73.41	{ 933.723 36.17	{ 841.178 37.62
1916 . . . . .	{ 47.548 11.01	{ 50.510 12.27	{ 46.023 13.75	{ 43.965 13.86	{ 53.506 20.84	{ 42.732 17.81	{ 34.585 34.52	{ 46.115 31.07	{ 81.502 68.92	{ 76.728 59.80	{ 720.097 29.43	{ 661.202 29.57
1915 . . . . .	{ 54.171 12.64	{ 56.221 14.39	{ 53.358 15.08	{ 49.932 15.17	{ 56.827 21.61	{ 45.869 19.11	{ 57.609 30.43	{ 47.896 32.27	{ 86.451 73.11	{ 51.406 63.45	{ 732.610 28.95	{ 674.138 30.15

NOTE.—The first figure gives the total number of deaths and the second column gives the number of deaths per thousand.

## Written Statement of VIDYAWATI YUVARANI KASMANDA, Lucknow.

1. As regards marital offence under Section 375, the punishment indicated in Section 376 becomes more of a punishment for the wife than for the husband, hence no report is ever made either to the police or to the courts to bring the offender to account.

Marital and non-marital offences should be separated into two different classes. The marital offence should be a civil offence punishable with fines which should be made over to the injured girl as her '*Stridhan*' whereas extra-marital offences should be punished with corporal punishments and heavy fines which should also be handed over to the injured girl.

2. An advance is necessary as there is a general consciousness amongst all classes more or less that the Age of Consent should be raised to protect young and immature girls from the consequences of sexual life. Saving them from disease and injury, and premature maternity, besides the enormous infantile mortality in India.

3. I have no statistics to go upon. The amendment of the Law in 1925 has had absolutely no effect since it is impossible to prove satisfactorily whether the girl is 13, 14 or 15. Horoscopes can be faked and the development of girls in different classes of society and conditions of life vary so much that it is impossible to determine by physical observation the exact age of a girl between 12, or 15. I would propose more careful registration of births and granting of birth certificates, which should be retained by the people as the substantial proof of their age.

4. No, but in many instances it has stimulated educated public opinion to put off the marriage before 13. The effective steps must (1) raise the marriageable age of girls, (2) it must make consent invalid before the age of 18.

5. The usual age at which girls attain puberty in rural parts of Sitapur and the United Provinces generally is 15 years. This differs in different classes of society—for example amongst the rich and well-to-do, puberty is attained earlier. This is also the case in the middle classes whose habits of life and customs, as regards accommodation within their houses, develops the sexual instinct earlier in children.

6. None of these cases go to court, in cases where girls who are married as children before 13 and before they attain puberty they are too much at the mercy of the family and the husband to be able to make a complaint. They are too young and ignorant to feel the sense of injury to their girlhood to make a complaint, besides society considers it indecorous in any girl to make such acts public. Wherever marriage takes place before the age of 13 it is impossible to say if ever a girl is safe from the carnal passions of a man. Where marriages take place later in life and the ceremony of *gauna* is strictly observed both age and law are respected.

7. No religious injunction is observed or enforced by society. It is all a question of the carnal passions of the man for which an excuse is afterwards found and religion is brought in.

8. '*Gauna*' is generally performed and observed in the rural parts but it has ceased to be the check it was intended to be and is merely a ceremonial function. The girl is at the mercy of her husband after her marriage. *Gauna* as a ceremony was meant in former times to delay the consummation of marriage till after a girl was mature and had reached the age of discretion.

9. No. Puberty is merely the first sign of a change from childhood. It does not mean maturity neither physical nor mental, to justify consummation of marriage. No girl can be a mother or risk pregnancy before she is 18 years old without serious injury to her own health and that of her progeny.

10. In India where there is a mass of ignorance and illiteracy no girl can give an intelligent 'consent' with due realisation of consequences before she is fully 18 years old.

11. I have known of girls at 16 get injured at the birth of their first born to say nothing of younger girls. Their health and happiness suffers. They suffer from physical injury, pain and disability. Their children are weak, puny and consequently swell the ranks of infantile mortality.

12. Yes.

13. It is strongly felt amongst the educated classes and slowly percolating to the masses. It is more general than it used to be before.

14. Never. Bitter experience has taught them all to wish for better things for their children.

15. I have already said it is impossible to tell correctly and exactly the age of a girl between 12 and 16. I have suggested before birth certificates and birth registration should be enforced. It would also help to ensure registration of marriages.

16. Difficulties would be very much minimized if the Age of Consent is raised to 16 and 18.

17. I have already answered in question 1 the maximum punishment would of course differ with the class of society to which the parties belong, and brutality of the offence.

18. The trial in all these cases should be conducted before a board of matrons or honorary women magistrates. The girl should have nothing to do with the police. Her report and complaint should be made to the board of matrons. Without such a procedure the greater number of offences would never be brought to justice. The appeal in these cases should be with the session courts but the evidence of the girl must be recorded *in camera* before women, to spare the girls the exposure and publicity of a gaping, tittering, crowd.

19. For collusion and improper prosecution or extortion there must be safeguards and punishment.

20. Both are necessary. One would help the other as far as the ignorant public opinion goes there is suspicion that the police will take advantage of Law, and harass people; and of the two alternations fixing the minimum age of marriage would be preferred, but it would only be putting off the evil day and give rise to a lot of litigation as to inheritance which is ruinous.

21. Law teaches people and penal law deters them. Social reform and education are effective in only a few instances and have not changed the physical nature of man. The best of them are victims to their passions and in all countries, even in England there is a Law for the Age of Consent. It is more necessary in India.

### **Written Statement, of PANDIT SHALAGRAM SHASTRI of Lucknow.**

1. The state of consent as defined in Sections 375 and 376 is not satisfactory.

2. It is desirable to increase the age beyond the present law.

3. Raising the age to 14 has not produced any appreciable effect. So long as there is no heavy punishment, no satisfactory results will follow.

5. In this province, generally the time of puberty of girls is in the neighbourhood of 12. It comes a bit earlier among castes in which there is a prevalence of meat, eggs, fish and wine.

6. I do not know the customs of any particular caste.

7. There are texts in the Shastras in favour of marriage of a girl before puberty and even after puberty. But there is no text that conveys that there should be cohabitation before puberty. There is injunction for cohabitation at every appearance of the menses, but it is not obligatory. Therefore there cannot be any Shastric punishment for its non-observance. If either of the husband and wife is afflicted with some bad malady, or is absent in another part of the country or is in jail, no cohabitation is possible. Besides, it is not obligatory, according to Shastras, to have cohabitation after the birth of a son. From this it is clear that the Shastric injunction for cohabitation after menses arises solely from the intention of having an idea that it is Dharma to have a son after marriage. Therefore it must also be

soon as to how that son could be had under the best possible conditions. According to the Ayurveda, having cohabitation with the wife before she is 16 is derogatory. Therefore, the Shastra which enjoins cohabitation with the intention of the best progeny connotes a time which is proper according to the science of health. Looking however to the changed circumstances at present, the period of 16 years according to Ayurveda in olden days must now be changed to 14 years, in my opinion.

8. *Caena* is observed in this part of the country in a majority of cases. It is almost always after puberty. There is no fixed rule as to how many days after puberty.

9. The physical development of a girl becomes fit to keep up her and her children's health at about 2 or 3 years after puberty.

10. Girls are not in a fit condition to give consent with due regard to consequences before 16.

11. There are several instances where owing to conception in tender age the girls suffer from debility, fever, puerperal diseases, consumption and even the children suffer from bad diseases.

12. I have given a reply to question 11 from my personal experience. Now I give the opinion of Ayurveda. According to that if conception occurs before 16, the child is still-born, if born alive it dies soon, if somehow lives long enough is always weak.

16. The Age of Consent must never be less than 16.

17, 18, 19. There ought to be a distinction between intra-marital and extra-marital offences. The inquiries of intra-marital cases must never on any account be placed in the hands of the disreputable police in India. The work should be entrusted to caste *Panchayats* or local Committees. They might either be non-official or semi-official.

21. Law is quite necessary.

**Letter, dated 11th September 1928, from SYAD SULAIMAN, Shibli Academy, Azamgarh (United Provinces).**

I received a copy of the questionnaire sent by you and also received a copy thereof from the Government of the United Provinces but being a Mohammedan I did not think it proper to express my opinion in regard to the matters referred to in the questionnaire.

This bill is divided into two parts. Illicit intercourse without marriage (*Niqah* punishable at any age and there can be no Age of Consent for that purpose. According to Mohammedan law within the marital relation attainment of puberty is the only guiding factor for intercourse and age is no consideration. Puberty depends on the condition of a girl and there can be no fixed age for girls. If this bill did not fix any age for consent and attainment of puberty were made the condition precedent to cohabitation there would have been no objection to it.

In this bill even 14 is not considered a suitable age for consent within marital relations though according to climatic conditions of India 14 is the proper age of puberty.

There is a fundamental difference of opinion between me and the advocate of the Bill. I do not believe that it is desirable to effect changes in social and domestic customs by law. In my opinion this work should properly be entrusted to social reformers.

I learn from the 'Times of India' that you are a great advocate of this Bill I hope your advocacy is based on some sound grounds.

**Written Statement, dated 14th August 1928, of Rai Sahib KEDAR NATH,  
Rais, Honorary Magistrate and President, Bundelkhand Orphanage,  
Banda.**

1. Yes to a certain extent, but it is difficult for me to give the reasons.
2. I am of opinion that the Age of Consent should be raised to 16 and my reasons for the same are as follows :—
  - (1) It will prevent cases of rape.
  - (2) It will raise the tone of morality.
3. Cases of seduction and rape are frequent in this part of the country, the amendment has reduced cases of rape to a certain extent, and the still raising of the age to 16 would prevent such cases further.
4. The amendment has not in any way affected the three points involved in this question. In my opinion unless legislature takes steps to penalize marriages below 14, there is very little hope of improvement in this connection.
5. The usual age at which girls attain puberty is 14 years. It differs in different castes. Generally girls of those castes who are accustomed to manual labour attain puberty sooner than those who are not.
6. (i) Among lower classes, (ii) among all classes, (iii) in some cases among uneducated higher classes and lower classes. No cases of this sort come to court.
7. Generally persons of lower classes, such as Chamars, Kories, etc., are accustomed to early marriage and that is not based upon any religious injunction to my knowledge but to the custom of their society. Among higher classes early marriages also take place and it is based upon a religious belief that a girl should be married before menstruation.
8. *Upanayana* ceremony is performed in this part of the country and generally it is anterior to the consummation of marriage but it is not necessarily after the attainment of puberty rather it is sometimes before puberty or very soon after it.  
But this is generally amongst persons of lower classes.
9. I do not consider that the attainment of puberty is a sufficient indication of physical development of a girl to justify consummation of marriage. In my opinion age of 16 is the correct age at which consummation of marriage should take place and then there shall be no danger to the health of the girl and that of her progeny.
10. At the age of 16.
11. I am not able to answer this question with sufficient detail.
12. Yes. As a lay man I think that early consummation of marriage effects very much the health of the girl and the result is that the issues are weak and consequently there is high infantile mortality. Such issues are no doubt intellectually and physically weak.
13. People of this part of the country being mostly backward in education, there is no question of any public opinion regarding the Age of Consent. It is only those classes of persons who are literate and have some concern with courts of justice that this opinion is common and they are in my opinion in favour of raising the Age of Consent.
14. Women as a rule like early marriages and hence favour early consummation of marriage.
15. No doubt there have been difficulties in determining the age of girls in connection with offences under Sections 375 and 376 I. P. C. and the only way to minimise these difficulties is to raise the Age of Consent to 16, for at that age it would be easier to determine the age of the girl.
16. My answer of question 15 covers answer to question 16.
17. I am in favour of separating extra-marital and marital offences into different offences, because that will be a step towards preventing marital offences to a certain



extent. The punishment of two years imprisonment of either description is in my opinion sufficient.

18. I am not in a position to answer this question effectively.

19. None beyond those existing at present.

20. Legislation fixing the minimum age of marriage would in my opinion be more effective, but that would not find favour with opinion of all classes of persons.

21. Progress of social reform by means of education and social propaganda would better secure the object in view but at the same time the help of the penal law is absolutely necessary.

**Written Statement, dated the 25th February 1929, of Mr. B. MUKHERJEE, M.A., Reader in Economics and Sociology, University of Lucknow, Lucknow.**

### *I.—Introduction.*

Our social code has been dry-docked for repairs. The Age of Consent Committee has a great and glorious work in front of it. Seldom has a Committee been called upon to consider and decide matters of such grave national importance affecting the welfare of so many millions of God's creatures in India! The demobilisation of human misery is long overdue and in this stupendous work, men are more important than measures. In India we are fighting on a hundred different fronts to ameliorate the condition of our people—to lift the shadows out of their lives and these shadows are long in lifting. The Committee hold the pass and it is up to them to keep the flag flying. The inherited and accumulated wrongs of ages under which Indian womanhood has groaned and travailed are now crying aloud for a remedy. Humanity's need is Humanity's claim. The miseries of Indian womanhood are deep and manifold. The torture of young wives under the overpowering greed for money or for petty domestic troubles, the proverbial tyranny of the almighty mother-in-law, the economic horrors of the dowry system, the plurality of wives, the marriages between old men in senile decay and young girls, the evils of the purdah system, early marriage and early maternity, the woes of deserted wives, the denial to them of the right of inheritance, the denial of education—these, and a large number of other miseries have been sitting tight on them for centuries. The Age of Consent Committee has been called upon to deal with only a part of their miseries—but that part is the most important part of the sum total of wrongs which our social code has piled on them. That is the basic wrong on which all the others have grown. If we can deal successfully with this great problem, we shall go a long way in solving the rest of their problems. The issues involved are too great, the danger of inaction are too big and we cannot haggle with an earthquake. In this big festival of human welfare, it lies with the Committee to halve their agonies and double their joys. In the name of humanity in the name of the poor, broken, tortured and agonized motherhood of India, I appeal to them—

Throw out the life-line

Throw out the life-line

Some one is drifting away.

Throw out the life-line

Throw out the life-line

Some one is sinking to-day!

### **II.—THE NATURE OF THE PROBLEM.**

#### *The causes and consequences of early marriage.*

The social laws of a people are always relative to time and place. They also depend upon the cultural development and condition of the people. Our marriage

laws were made for us ages ago and they have practically come down to us intact through the long corridors of human history without any substantial modification to meet the altered needs of modern society. Marriages in India always took place early—rather very early. A number of factors combined and produced this institution of early marriage. The tropical climate of the country hastened the attainment of puberty in girls which comes somewhat earlier in India than in the colder countries of the West. Our Sastras recognized this basic fact and gave a religious tinge to it by commending the marriage of girls at an early age *before* the attainment of puberty in order that the parents might be saved from the horrors of hell. This semi-religious dictum had such a strong hold on a religious people that nothing could shake the foundations of early marriage throughout our history. Besides this religious factor, there were other factors at work to strengthen this custom of early marriage. The general insecurity which existed during the entire period of the Mahomedan rule and the particular dangers which affected the lives of our women, the kidnapping and abductions which were only too frequent at the time and the greater risks of such crimes against Virgins than against married women—all these naturally compelled the parents to settle the future lives of their daughters as early as possible. All these factors, combined with the economic distress in keeping an unmarried daughter at home for a long time—helped to strengthen the institution of early marriage in India. On the other hand, in the majority of cases, the wife is an unpaid servant in the husband's family—which she ever could be in her father's home—and, as such, the sooner she came, the better for the family. Thus did the custom continue for ages and its age-long effects have now begun to tell seriously on the lives of the people. The extent of the evil is enormous. A few figures from the latest Census Report (of 1921) will be more eloquent than anything that I can say, *e.g.*—

Total number of children—of all religions —married in 1921 :—

	AGES.				
	Below 1.	1—2	2—3	3—4	4—5
Total . . . . .	15,987	18,282	48,681	89,670	156,527
Hindus . . . . .	13,833	15,528	40,553	74,488	132,037
Aryas . . . . .	9	21	18	37	36
Bramhos . . . . .	..	..	..	..	1
Sikhs . . . . .	11	3	38	70	103
Jains . . . . .	86	105	230	338	584
Buddhists . . . . .	1	..	10	15	30
Total Hindus.	13,940	15,657	40,849	74,948	132,791
Mussulmans . . . . .	1,574	2,153	6,302	12,461	20,485
Christians . . . . .	108	98	245	382	665
Others . . . . .	365	374	1,285	1,879	2,586

It must be pointed out, however, that though the above table shows the extent of early marriage prevalent in India, the usual evils of early marriage are non-existent in the case of such tender marriages.

The following table gives a summary of marriage figures at other ages in 1921 :—

	AGES.		
	0—5	5—10	10—15
Hindus . . . . .	276,439	2,376,196	6,923,893
Aryas . . . . .	121	2,160	10,204
Brahms . . . . .	1	12	50
Sikhs . . . . .	225	6,510	48,694
Jains . . . . .	1,343	5,166	22,790
Buddhists . . . . .	56	313	3,770
Total Hindus . . . . .	278,185	2,390,357	7,009,401
Mussulmans . . . . .	42,975	343,952	1,409,677
Christians . . . . .	1,498	7,249	32,443
Total married in all India*	329,147	2,774,092	8,674,273

[ \*NOTE.—The total includes the figures relating to some minor communities which have been omitted in the table above.]

The following tables give a comparative statement for a period of 40 years :—

Out of every 1,000 males, the number married were as follows :—

Census year	AGES.		
	0—5	5—10	10—15
1881 . . . . .	*	*	152
1891 . . . . .	6	36	154
1901 . . . . .	7	36	134
1911 . . . . .	7	37	129
1921 . . . . .	6	32	116

[\* Figures not available].

Out of every 1,000 females, the number married were as follows :—

Census year	AGES.		
	0—5	5—10	10—15
1881 . . . . .	*	*	500
1891 . . . . .	13	123	495
1901 . . . . .	13	102	423
1911 . . . . .	14	105	430
1921 . . . . .	11	88	382

[\* Figures not available].

It is unnecessary to multiply figures. It will be evident from a study of the above tables that the size of the evil is enormous—that both vertically as well as horizontally—in depth and in extent—the evil is appalling and it needs immediate action.

I shall now proceed to consider some of the evils of early marriages. These evils are so apparent that one need not be a competent medical man to discuss the question. Even a layman will find these evils prominently at his eye-level. I shall put these evils serially:—

(1) The greatest danger of early marriage is its disastrous effect on the health of the poor unfortunate mother. No medical statistics are needed to prove this self-evident truth. It is usual to permit cohabitation on the very first sign of puberty and this generally leads to premature conception. The appearance of the signs of puberty cannot be the only test of a girl's fitness for maternity. It is certainly not an indication of that stage of physical maturity in the girl which alone can justify the responsibilities of motherhood. Marriage and all that it connotes can only be fit for people physically mature. Motherhood at such an early age—I have seen young girls who became mothers at 14—is a very grave problem for the unfortunate girl—especially in rural India where the facilities of modern midwifery are deplorably wanting. The result is a very high death rate in child-birth. Most of these girls meet with premature death out of sheer exhaustion. The victims are in their graves and social anarchy, by daily rehearsal, has become a familiar fact and murder has ceased to be a crime.

(2) Those who can fortunately escape death in child-birth find however that their health is so shattered that they have to spend the rest of their lives in lifelong suffering and misery from perpetual ill-health. For the rest of their lives they become perpetual invalids. This happens all the more in cases where frequent conceptions take place—almost at regular intervals of 1 or 2 years. Such conditions of life combined with poor nourishment, overcrowded dwellings and the necessity of hard manual labour soon after child-birth—conditions which prevail in 95 per cent. of the cases—can only lead to one thing, *viz.*, an early death. It is chiefly due to these conditions that hysteria and other nervous diseases are so common with our girls and that tuberculosis is playing havoc with them. Tuberculosis is far more common amongst the young girls than among the boys because, so far as the physical cost of maternity is concerned—the price that is paid for it—it is the old old story of the woman who pays.

(3) The children born of such mothers can hardly be strong and healthy. Most of them die soon after they are born. The rate of infant mortality in India is very high. Those who escape death in the cradle continue in poor health for the rest of their lives—with a low expectation of life, low resistance to disease, low vitality and low efficiency all round. It is hardly fair to them that for no faults of their own, they have to start life with such initial handicaps. These causes lead to a serious physical deterioration of the people. We are committing racial suicide. No wonder, we are a dying race.

(4) The rapid multiplication in the number of children and the serious ill-health it produces leave the poor mothers little time, opportunity or even physical capacity to give proper care and attention to the little children actually born. This is another serious injustice to the poor unfortunate babies.

(5) It leads to an uneconomic growth of population with consequent economic distress. Amongst the poorer classes, the number of landless labourers is increasing. Amongst the middle classes, there is a serious unemployment problem which has been aggravated enormously since the rapid increase in the number of universities in India. There are 17 now in place of 5 as before and these 17 universities are enormously increasing the number of the intellectual proletariat. I say nothing against it—I am merely stating a fact. Thus, to the majority of young people, the cares and worries of family life come very early and whatever may be the occupation in their lives they find their backs bent under the heavy load of a premature family life. The increase in population leads to increased competition for work, unemployment, low wages, and all these react on the health and efficiency of the people.

(6) Early marriage arrests the chances of higher education of both boys and girls—especially girls. Girls in India have no girlhood at all. From infancy they shoot

up into womanhood. Thus they get no opportunity of continuing their education after marriage—firstly because they can find little time or energy for it, and secondly because in most cases, orthodox families dislike the idea of either sending a married girl to school or of educating her at home. Early marriage thus interferes seriously with the intellectual and educational development of girls. And this reacts on the education of children. What a poor intellectual capital for a people that one-half of it should remain perpetually illiterate! When we educate a girl we practically educate a family.

(7) Early marriage also leads to an abnormal and premature development of the sex-instinct and this grows at the expense of other higher and more important instincts of human life. It dominates the minds of young parents to the detriment of other normal and healthy lines of thought and work. Under the laws of heredity, the evil effect of this abnormal development is transmitted to the children and thus the vicious circle continues.

(8) Lastly—and this is, I think, the gravest indictment against child marriages—it leads to infant widowhood with all that it means in a country where, for the vast majority of the people, their remarriage is prohibited under the social code. The total number of widows in India in 1921 reached the appalling figure of 26,834,838. Out of this huge figure, the number of child widows can be distributed as follows:—

Total number of child widows—of all religions—in 1921:—

	AGES.				
	Below 1	1—2	2—3	3—4	4—5
Hindus . . . . .	597	494	1,257	2,837	6,707
Aryas . . . . .	..	..	..	1	4
Brahmos . . . . .	..	..	..	..	1
Sikhs . . . . .	..	..	..	1	3
Jains . . . . .	15	4	23	26	51
Buddhists . . . . .	..	..	..	..	3
<b>TOTAL HINDUS</b> . . . . .	<b>612</b>	<b>498</b>	<b>1,280</b>	<b>2,865</b>	<b>6,769</b>
Mussulmans . . . . .	127	84	278	526	1,711
Christians . . . . .	5	7	13	13	47
Others . . . . .	15	23	29	71	166
<b>GRAND TOTAL</b> . . . . .	<b>759</b>	<b>612</b>	<b>1,600</b>	<b>3,475</b>	<b>8,693</b>

The following table gives the total number of child widows of all religions in different groups of ages in 1921:—

Ages	Total number
0—5 . . . . .	15,139
5—10 . . . . .	102,293
10—15 . . . . .	279,124
15—20 . . . . .	517,898
20—25 . . . . .	966,617

The evil is most widely prevalent amongst Hindus and the number of child widows amongst them are (1921):—

Ages.	Total number.
0—5 . . . . .	11,892
5—10 . . . . .	85,037
10—15 . . . . .	232,147
15—20 . . . . .	396,172
20—25 . . . . .	742,820

This enforced infant widowhood means, for so many young creatures a life of perpetual pain, suffering and rigorous austerity. Their lives are overloaded with agony from day-to-day. If the figures above could speak, what an epic of blood and misery they could unfold! Their lives are more full of deep shadows than sunbeams. To express in language their miseries would be to intone an epic for which I am frankly incompetent. Human language would be too poor to provide a real measure of their brutal wrongs. If blood and tears be the price of this social code, God knows how they have paid in full. This seems too shocking to be true—but, unfortunately, it *is* true!

This infant widowhood also means, in most cases, economic dependence upon others for maintenance. The burden becomes greater if the widow has children—as is very often the case. It means ill-treatment, under nourishment and overwork. It means a life of heart-rending misery and endless woe. In some cases—though very few—it ends in a life of shame. The excruciating agony of their lives and its inevitable consequences make most of them, in the words of Hood,—

Mad from life's history  
Glad to death's mystery  
Swift to be hurled  
Anywhere, anywhere  
Out of the world!

The evil was not so widely prevalent in early times as it is now. Formerly, only the higher castes prohibited widow remarriage. But now the lower classes have also adopted this custom in order to imitate, what they think, is the mark of social respect—so that the custom is now very extensively followed.

### III.—THE ORTHODOX VIEW.

#### *Arguments against reform.*

So much for the evils. What about the remedies?

Before, however, I turn to them, I should like to discuss at some length the orthodox point of view which is generally opposed to any reform. The principal arguments used by it may be stated as follows:—

*Firstly*, it is argued that any change would be against the tenets or mandates of our Sastras. As this is one of the strongest arguments against reform, I would consider it in detail. I can concede that there are many people amongst us who honestly think that any reform in our marriage laws would be a serious violation of our religious doctrines. But I think that there is no real ground for any such view and that the opinion of such people is entirely wrong. Their misapprehension arises from an inadequate and imperfect appreciation of the real facts of the case. I shall try to put these facts for the consideration of the committee as below:—

(a) Is it really true that our Sastras give a definite mandatory prohibition against a higher age of marriage? It is quite possible to refer to hundreds of cases from the Ramayan, the Mahabharat and the other religious texts of Hinduism

where girls were married at ages which would perhaps rudely shock our ultra-orthodox people. The custom of Sayambara—so widely prevalent in early times—could not possibly refer to little infant girls. This custom—by which the girls had to choose their own husbands out of a large number of prospective candidates—must have been meant for girls who had reached the age of discretion. Whatever might have been the grounds of her choice—whether wealth or beauty, prowess or youth—She had to exercise her own judgment in making the choice of her partner in life. Would it have been possible for her to do it if she had been a tiny little girl—unable to realise and appreciate the serious consequences of the ceremony?

(b) Do we really obey the Sastras on all points? It is not a fact that there are so many thousands of directions in the Sastras with regard to our daily life and conduct which we quietly ignore in these modern days? If we feel that we are bound to obey the Sastras, would it not be reasonable and honest to obey it as a whole? Where is the Sastric injunction which lays down that we can obey a part and disobey the rest? Where has it given us the liberty to pick and choose? If we say that the Sastras sit tight on us, we must be prepared to prove that we feel the whole weight of it in all parts—that the weight of the Sastras is widely distributed over the entire surface and that we are bearing the burden well. It would however be rank hypocrisy to suggest that the case is really so. We are nowhere near about it. It is very well-known that for one direction of the Sastras that we obey—and even that is done most imperfectly—there are thousands that we don't. We obey where we please: we disobey where we like. After this, it looks like sheer cant and hypocrisy on our part to plead the Sastras against any reform.

(c) In ancient times, when there was no properly organised state and no proper Civil law, the Sastras were the only codes which practically did duty for the civil code. The Sastras may be said to consist of two parts *viz.*—

(i) the pure religious doctrines which are fixed and immutable for ever and which relate to the salvation of souls after death and

(ii) the social code regulating the social life and conduct of the people. The social code was relative to time and place. It was made for a particular people at a particular stage of their development for particular purposes. Our Sastras were not merely a code of religion; they were an amalgam of the religions and the social codes joined in one. It would be very easy, for instance, to quote thousands of sastric dicta which relate to the social life of the people which are inappropriate, unnecessary and ill-adapted in our present condition or in the present stage of our social evolution. The religious part of the Sastras must remain fixed and immutable, but the social part of it cannot be held to have legislated for all times to come. It was relative to time and place. The coat that was tailored for a child of 5 cannot by any arbitrary authority be made to fit a man of 50. The old social code cannot be allowed to resist the needs of readjustment and reform to suit the strenuous life of the modern age.

Social anthropology teaches us that when a large mass of men persist in a wrong course of action for a very long time, they become so habituated to it that they altogether cease to regard it as a wrong. They first take it as a matter of course. Then they begin to look on it as natural. Anything deviating from it is regarded as unnatural or immoral. Lastly, they seek to justify it by painting some of its real or apparent advantages—for, there is hardly any social institution which is either wholly good or wholly bad. There is good and bad in everything—more or less of each—but they over-estimate the good and under-estimate the bad effects and thereby they seek to justify it. This has happened in all ages and in all countries of the world. When iniquity is long practised, it ceases to look iniquitous. By long association, the social conscience makes a compromise with it. In this, it is powerfully aided by the priestly class which has been in all countries and in all ages a close oligarchy—a powerful Trade Union—which, by calling into its aid the influence of religion on human minds, has long exercised one of the worst forms of tyranny known to the world. The rise of rationalism in all countries has been one long struggle against the tyrannies of the priest-craft. What of slavery, what

of serfdom, what of the confessional in the West? Westernmark refers \* to the priest-craft in one country as "great corrupters of domestic virtue." Elsewhere † he refers to the strong support given by the early Christian priest-craft to the institutions of slavery and serfdom. "The principle that all men are spiritually equal in Christ does not imply that they should be socially equal in the world..... In the early age, martyrs possessed slaves and so did abbots, bishops, popes, monasteries and churches ..... Throughout Christendom the purchase and the sale of men as property..... was recognised as a legal transaction ..... Whilst the church favoured liberation of the slaves of laymen, she took care to prevent liberation of her own slaves: like a physician she did not herself swallow the medicine which she prescribed to others. The council of Agatho considered it unfair to enfranchise the slaves of monasteries, seeing that the monks themselves were daily compelled to labour..... She (the Church) represented serfdom as a divine institution, as a school of humility, as a road to future glory. She was herself the greatest serf-holder..... Whilst the cause of freedom owes little to the Christian Church, it owes so much the more to the feelings of humanity and justice in some of her opponents." Similarly, Lecky ‡ refers to the fanaticism of the priests and shows how they always tried to exalt their power and dignity to the highest point—how they entirely dominated the lives of the people and employed "every kind of spiritual threat steadily, persistently and effectually to coerce them." The confessional involved so much of scandal and sin that in the middle ages, stringent rules had to be laid down to protect the women from the priests. Canon law separated the priest and the penitent to prevent such scandals. The priest had to sit in a public place where he could be seen by all people in the church. He was not allowed to hear any woman in a private place.

So much for the tyranny of the priest-craft in the West. The same is true of India as well. In India, what crimes have not been committed in the name of religion! The deplorable communal riots is a case in point. In the garb of religion, the priest-craft has tyrannised for ages. What of Suttee? What of female infanticide? What of Vallaba Charyyas? What of Devadasis! Can anything in this world exceed the monstrous enormities of these crimes? Who made them possible? Let us look at one of them only in detail. For ages, the hypnotised mothers—who wanted to build their permanent homes in Heaven with the aid of their priests—did not hesitate to throw their dear little babies into the depths of the blue sea while mechanically they echoed the *mantrams* recited by their priests. When these helpless little babies in their agony of a violent and cruel death sent out heart-rending cries to Heaven and—overwhelmed with fear, overcome with fright—sought their mothers in a last parting and fruitless appeal for life—even then, at such a time when hell was let loose in the name of religion—our priests did not hesitate for one moment to accept with a light heart the petty fees and gifts from the hands of those bereaved mothers! What a harvest of crime and tears! § This monstrous iniquity—this cruel ritualism—had gone on for ages and yet no mother had for one moment questioned it or doubted it or even shrunk from it because it was all done in the name of religion. In Suttee and female infanticide priest-craft had played havoc with human lives. In Vallaba Charyya system they played havoc with the chastity of women. To them, ritualism was greater than life. The priest-craft lay safely entrenched behind the ramparts of its religion and ritualism while the victims of its theology lay all ar und in heaps. Priest-craft has ruled India for a long time but it cannot be allowed to rule India for all times to come. Humanity, reason and common sense have been asking with one voice—how long will it live? When will it end?

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\* Origin and development of Moral ideas, Vol. II, p. 432.

† *Ibid.*, Vol. I, pp. 693-704.

‡ Democracy and Liberty (Vol. II, p. 17).

§ No one has described it with greater force or more sublime pathos—no one has given a better flashlight picture of this tragic scene than Sir Rabindranath Tagore in his famous poem—*Devatar gras*.



(d) Religion may be the private concern of a people but is the safety of human lives a private concern as well? Has the state got nothing to say when it finds so many unfortunate girls and so many innocent babies pushed violently down the precipice and sent to an early grave as a result of child marriage? The little mother and her little baby must have certain inalienable rights which a civilised Government cannot deny. Government must concede to them the right to live.

(e) The Hindu religion is much greater than its creed—much bigger than its rituals. Religion must always be greater than the church. Those who think that a slight advance in the marriage age of our girls will kill Hinduism have a very poor conception of their religion. Is Hinduism after all such a tiny little toy? Is it all tinsel and sham? Does it really need infant marriage and child widowhood to prop it up? Is it built on agony and based on tears? Is this harvest of blood and misery vital to its life?

Secondly, it is said that an alien government has no right to interfere with our religion and it should not force social legislation. It cannot interfere with the religious customs and practices of the people. What is more, the Government—it is said—is pledged by the Queen's Proclamation of 1858 to religious neutrality and it would be sheer breach of faith on the part of Government if it now went back on it.

Those who urge this objection forget how the Government has repeatedly interfered with our religious customs and practices and how it has already introduced religious and social legislation to meet the needs of justice and good government. Even now, it is doing it every day without any protest from the orthodox hemisphere. This cant of neutrality has become positively sickening. Was it not interference with religion when Government prohibits human sacrifice for religious ceremonies, female infanticide and the suttee system, permitted widow remarriage and civil marriage and removed the disqualifications attending on change of religion? In no country has religion got a greater hold on the people than India and in no country has greater mischief been done in the name of religion than in India. Even to-day Government is *daily* interfering with religious practices of both Hindus and Moslems in every nook and corner of India over the question of music before mosque. When the Hindus insist that their religion demands processions with music and the Moslems ask that there shall be no music near any mosque at any time in 24 hours—does not the Government step in—every day in every part of India—to effect a compromise by actually allowing processions with music during limited periods—thereby restricting to some extent the religious liberties of both Hindus and Moslems? Is this not interference with religion? What, after all, gives the Government the moral right to do it? It is certainly the supreme duty of saving human lives. It is the duty of maintaining law and order. If the procession is prohibited completely—there will be a riot by the Hindus. If it is allowed without any restrictions there will be a riot by the Moslems. In either case, there will be a most deplorable loss of life and property. In such a case, Government has the moral right and duty to prevent it by imposing any reasonable restriction on the religious liberties of the people.

Has not the Government the same moral duty to protect the lives of innocent little girls and their poor little babies? Can a civilised Government go to sleep over it? Life is certainly larger than politics and Man is more important than either his theology or his Church. If it is the loss of human lives that justifies Government interference there is more loss of life in one year through early marriage than in all the communal riots of India. The one is silent and therefore unseen. The other is a volcano and therefore seen. If it is the actual rioting and the disturbance of social peace that justify government interference, then we have absolutely no prospect of any reform at any time because these poor little mothers will never strike—nor even lift their little fingers—against the monstrous wrongs they suffer by the blue laws of our social code. Is that the reason why an all-powerful Government has gone to sleep over it. The long arm of law is powerless to protect them. It is paralysed through fear of prejudice and priest-craft. It will reflect little credit on a Christian Government if the position really came to that. It is certainly no credit to the Government that the present position has been al-

dowed to drift so long. A civilised Government cannot afford to be timid. Government might have a moral justification for caution when the machinery of Government consisted entirely of Europeans and officials. One could understand and even sympathise with the Government for the timidity it showed in 1891 when the Age of Consent Bill first came up for consideration. The legislature at that time consisted chiefly of Europeans and officials. But now the case is just the opposite of 1891. A majority of *elected* Indians in the legislature is prepared to shoulder the responsibility for reform and thereby relieve the Government of all responsibility and charge of having interfered with religion. Caution is good but an overdose of caution is bad—specially when the evil is creating so much mischief all around us. It is no longer a case of an alien government interfering with our social customs but the people themselves revising their own customs to suit the modern conditions of life. The people are certainly entitled to do it by themselves. Why should the Government interfere now merely to bar all reforms? Further, after the lead given by the Native States (Barada, Mysore, Bharatpur, etc.) and after the wide and universal support that public opinion has given to Mr. Sarda's Bill Government can well afford to be less timid. The question of early marriage is before the public since the days of Raja Rammohan Roy and yet, after a century, Government still pleads that it must first find out the public opinion on it before it takes the next step. How long will it take public opinion to reach the olympian heights of Simla? What makes the Government so awfully shy of social reform? How much longer is the flag which stands and floats for freedom going to be a silent witness of this tragic drama? How much longer will a *Ma Bap* Government look silently on the miseries and agonies of our groaning womanhood? A civilized Government cannot—it dare not—disown its own responsibility.

*Thirdly*, it is argued that if the marriage age is unduly delayed there is grave risk of our girls going wrong. Our attention is drawn to the shocking revelations relating to social life in Western countries as painted in lurid lights by Lindsey and Evans in their *Revolt of Modern Youth* and in similar other books. It is true that delayed marriages in western countries have led to various forms of sexual abuses—e.g., it has led to unmarried motherhood, free love, trial marriage, companionate marriage, abortion, infanticide, contraception and birth-control, etc. Judge Lindsey, for instance, speaking of America, refers to unmarried women who want babies but not husbands\* and others who want husbands but not babies. A typical case is quoted by him from a letter a young girl wrote to him—"I selected the father of my child very carefully..... I told him I was not enamoured of him or any other man and never would be. I said I was a woman and was entitled to have a child if I wanted one..... I wished him to be the father of my child..... The father of my baby understands that he has now gone out of my life completely, that he has no claim on me or I on him."† In yet another place, Lindsey refers to the "murder of at least a million and a half unborn babies in this country yearly and the murder of thousands upon thousands of new born natural but illegitimate babies besides."‡ Shades of Miss Mayo— heal thyself?

The evil is real and there is a real risk. None of us want in our country the over-sexed boys and girls of the West—the lavender girls with their continuous search for thrills in life. We don't care to have either flapperdom or Foolly Lane in our midst—the Red Light School Clubs which allow illegal sex-intimacies between its young boys and girls. But I venture to point out that this evil arises only where the marriage age is put up *unduly* high as in the West. But in India, we have never thought of putting it up so high. Besides the bonds of social and religious restraint and parental control and supervision sit far more tight on our people than on the West where they are looking on morals as a pure profit and loss account. Consequently, while I do not deny that there is some risk, let us not exaggerate it. It will not help us for a right judgment to state the case with more colour and emphasis than may be really needed.

\* The Revolt of Modern Youth (P. 249) by Judge Lindsey and Evans.

† *Ibid*, p. 241.

‡ *Ibid*, p. 221.

*Lastly*, it is said that any remedial legislation would be very difficult to enforce. No doubt it is true. Cases of infraction it would be difficult to detect. The self-interest of the parties, the modesty of the girl, the security of her future career and tenure as a wife in the husband's family—all these factors make it almost impossible to detect any sexual offence. In a recent case before the Allahabad High Court \* where a man of 34 had raped a child-wife of 11, the medical evidence established beyond a shadow of doubt that the serious injuries were due to brutal sexual intercourse. Yet, as his Lordship the Chief Justice remarked: "Partly due to modesty and partly to her being under the control of her husband's relations, the girl does not admit what was done to her and has been tutored to put forwards the defence story that she got hurt by falling on a peg on which a goat used to be tied."

This argument is no doubt valid—but valid only to a limited extent. My first answer to it is that this argument applies only to breaches of the consent law. It is difficult to detect *them*. But it does *not* apply to breaches of the higher age for marriage law. It would be quite easy to detect them—specially when we have enforced a system for the registration of marriages which I have proposed later on. Secondly, though it may be difficult to enforce it, the attempt must be made. There is such a thing as social ideals which have a great value in guiding and shaping human conduct. There are ever so many difficult things which we still attempt and by persistent attempts at least we conquer. Thirdly, even if we do not succeed wholly, a partial success would still be a great achievement. Even a slight increase in age in some cases will result in incalculable gain in the health of our women and girls. These few examples of a better life will slowly and gradually act as the best aid to tone up the lives of all the rest. Fourthly, we cannot and we must not depend on the penal legislation alone for achieving our object. We must supplement it by a strenuous educative propaganda among the people so as to popularise the legislation from some time before the law is actually brought into force. It would cost little as compared with the advantages that we would get thereby. Government cannot afford to put petty arithmetic before human life. Lastly, the penalties that might be imposed in the few cases that will come to court will themselves serve as the best propaganda in aid of the reform.

For all these reasons, I do not think this objection is strong enough to bar the necessary remedial action.

#### IV.—THE RELATION BETWEEN THE AGE OF CONSENT AND THE AGE OF MARRIAGE.

Before I make my suggestions as to the lines of reform it is necessary to make clear the relation between the age of consent and the age of marriage.

Marriage and its consummation are two different things. Though the one leads to the other, yet the two are quite distinct. If early marriage did not lead to early consummation, there is little to be said against it. By allowing early marriages while prohibiting early consummation it might be possible to make an honourable compromise between the orthodox and the modern points of view. In such a case, if the age of consent can be effectively raised, the age of marriage need not automatically rise.

Unfortunately, it would hardly be possible to do it and because it would be practically impossible, the necessity for some effective safeguard arises. We must face facts however ugly or inconvenient they might be. In 99 per cent. of the cases sexual intercourse follows immediately after the appearance of the signs of puberty which come soon after the marriage. The father of the girl practically loses all control over her after her marriage and in the great majority of cases he has to send her to her husband's place immediately or soon after the marriage. Otherwise he runs a grave risk of displeasing her new masters which might have serious consequences in the poor girl's life. Marriage with young girls is not merely a career. It is practically, as Miss Ciceley Hamilton put it, a trade.

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\* I am quoting from the "Leader" report (June 15, 1929).

Hence, for all practical purposes, if we put the age of consent high and yet at the same time allow early marriages, the high consent age would be useless. It may be effective against strangers—but, as against the husband, it will have no effect. Hence a higher age of consent must run parallel with a higher age for marriage. A higher age for marriage can be enforced because the ceremonies must be public. But a higher age of consent can hardly be effectively enforced from the nature of things. With a higher age for marriage—which we can enforce—a higher age of consent—which we cannot enforce—may even be unnecessary. Hence legislation to stop early marriages is vitally necessary. What is more, I would suggest, that taking human nature as it is, it would be prudent to fix the age of marriage and the age of consent for girls at *practically the same age*, because in almost all cases, if a girl is 16 at her marriage—as I have suggested—sexual intercourse will, as a matter of course, follow immediately after the marriage. I would suggest that the minimum age for marriage should be—

for boys . . . . .	24
for girls . . . . .	16

while the age of consent should be fixed thus:—

Intra-marital (against the husband) . . . . .	16
Extra-marital (against stranger) . . . . .	21

Due to our tropical climate. I should think 16 for the girls would be a safe age for marriage and its consummation. By putting the age of marriage and the intra-marital age of consent at the same figure we accept the logic of facts and recognise what would happen as a matter of course in 99 cases out of 100. It is always best to be honest.

#### V.—THE MODERN VIEW.

##### *Arguments for reform.*

I will now proceed to discuss the modern view of this question. Much of it has already been said in the earlier pages of this note. There are just a few other points that I will try to indicate here.

(1) The orthodox people forget that they do not constitute the whole of India. They seem to imagine as if India minus themselves is equal to zero. They forget that there has been a tremendous advance in public opinion recently as regards the age of marriage. They say that the country is not yet ripe for reform. If reform is to wait till they thought that the country was ripe for it, it would have to wait till eternity. These people keep their eyes perpetually shut and there are none so blind as those who will not see. They do not realise how rapidly the country was moving towards a higher level of life. The rapid expansion of education—specially of female education—the tremendous impact of the Western Civilisation with the social life of India and the deep and wide repercussions it has produced, the remarkable advance in humanitarian ideas throughout the country—which is best seen in the new angle of vision towards the so-called depressed classes—the increased facilities of communication, the greater security of life under British rule, the resistless rush of economic forces which is daily making early marriage the most uneconomic proposition in a man's life and thereby forcing up the age of marriage among boys and therefore, though indirectly, among girls as well, the ever-increasing demand for higher education among women—all these have produced a wonderful change in public opinion as regards the early marriage of our girls. The educated community is now strongly in favour of a higher age for marriage. What the educated community is doing to-day, the rest of the country will be doing to-morrow. The lead has come from them. The wide support given to Mr. Sarda's Bill—specially among women—ought to be an eye-opener to the orthodox people on the one hand and the Government on the other. As a writer in the "Statesman" put it—"the unreasoning bigot has begun to reason, the reasoning orthodox to doubt and the doubting conservative seems prepared to revise his views." This is just the time when Government should intervene and by cautious legislation

bury the great evil. It is true, legislation should not move too fast or too far in advance of public opinion. But, I venture to point out that public opinion has already marched out and it is legislation that is lagging far behind. There is always a great danger in letting legislation lag far behind the public opinion. The one ought to be a mirror of the other. As the "Statesman" very forcibly put it \* "there is no such thing in India as a social conscience, though there are many social consciences, and authority cannot afford to show respect only to the inferior varieties."

Laws are relative to time and place and just as we cannot legislate for posterity, with equal justice, we cannot allow the dead past to legislate for us. Conditions of life in the remote past were more suitable for early marriage—or, at least, less unfavourable for it—than they are to-day. At present the conditions of life are such that they go ill with early marriage. *Garhasthyam* and the plain, simple ascetic ideals of social life—which were in those days the greatest safeguards against the evils of early marriage—do not at all exist to-day. Early marriage in the remote past was really a betrothal without consummation. In those days there was a distinct water-tight gap between marriage and its consummation. Hence, it was not so very mischievous than as it is now when no such gap operates. Early marriage minus premature consummation is not such an evil as early marriage with it. The old custom remains—but the old conditions have long passed away. This is neither logic nor common sense. Regard for old institutions and traditions is certainly good: but always to swear by them, irrespective of variations in conditions, is to reveal a deplorable lack of initiative and adaptability. All human institutions in all countries—Social, political or economic—have saved themselves from stagnation and death by continuous adaptation to new conditions. Twentieth Century India has no use for her fourth century prescriptions.

(2) The extraordinary number of crimes against young girls in the different parts of the country—but mostly in Eastern Bengal—demands serious consideration. Kidnapping and seduction of girls are far too common now-a-days and the evil has now spread on an extensive scale. The present law badly needs amendment and an advance in the age of consent against strangers is urgently needed for the protection of young girls. In most cases, these unfortunate girls are ultimately forced to a life of shame. The nature of the evil is shown by the suggestion made in some quarters that if the age of consent is raised, it would affect the earnings of Devadasis and prostitutes. The ordinary law might have served the purpose if it had been an ordinary evil. But, after the recent revelations in the famous Raj Kumari case and similar other cases of Nepali girls in Calcutta and elsewhere and after the almost daily rehearsal of such crimes in all parts of Eastern Bengal in recent years, it is clear that organized crime needs a different penalty and a more drastic punishment than if the crime had merely been individual and isolated. It is for this reason that I have suggested that the extra-marital age of consent should be fixed at 21. A higher age of consent against strangers would be of material assistance in coping with the evil and stringent punishment should be provided for all who take part in this industry of hell. The aider, the abettor and the person in whose house or custody the girl is concealed should be heavily punished with the actual culprit with rigorous imprisonment. In majority of cases, the girl who is abducted is outcasted and she finds that she has no place for herself within the limits of civilised society. They are thus forced to a life of shame while the miscreants who ruined them do not share the woes and miseries of a life they had ruined.

(3) There is yet another way in which I would put the case for reform. I can freely admit that there are grave difficulties in the way: but no great task was ever easy in this world. Has there been any great social reform anywhere in the world in any age by the unanimous vote of democracy? It reminds me of the famous remarks of Mr. Lloyd George—"Even purgatory had to be abolished by the casting vote of the speaker." At no period of human history have the

great evils of the world been swept away by voluntary choice. Dwelling, slavery, serfdom, Suttee system, female infanticide and a great number of similar other evils had to go by sheer compulsion. Some coercion has always been needed. No country can possibly have any reform if it has to wait until every man and woman in the country agrees to it. We can legitimately wait till the majority of the people agree. The best test to find out if the majority of our people agree to the reform would be for the Government to remain neutral and to leave it to the free vote of the Legislative Assembly. As Mr. Jayakar beautifully put it—"When the Social fabric is on fire, do we wait to find out if public opinion agrees that the fire should be put out?" In such a case it would be criminal to cry caution and halt in the way of the obvious remedy. Legislation will accelerate reform and will give it a long lead. What little of public opposition exists at present will gradually but ultimately yield to legislation. On the other hand, if reform is to come by a slow process of filtration by education, persuasion and propaganda, it will be ages before we can make any substantial advance, the growth of education is much too slow in India. For one man that we educate there are thousands whom we don't. At that rate there is little or no prospect for any real reform. Further, even literacy is not a sufficient insurance against early marriage in all cases. Considering the serious gravity of the issues, legislation even at the risk of some adverse public opinion can be easily justified—as it was actually done when the Suttee system had to be abolished. I venture to suggest, that public opinion—as I have discussed elsewhere—far from being adverse is now very much in support of the reform. This is just the golden time to wake up and to see it through.

(4) Lastly, the fate of this reform movement will make or mar our case for Swaraj in India. It is hardly necessary to emphasize that England, America and the rest of the civilised world are watching us—thanks to Miss Katherine Mayo. Our fitness for Swaraj will be judged and decided by what we do or dare not do on this question. This is a point we cannot afford to forget.

#### VI.—LINES OF REFORM.

I shall now proceed to indicate the remedies that I would suggest in order to meet the evils and to discuss what might be the lines of real reform. Before however I do it I want to make two preliminary points quite clear, *viz.* :—

(A) Whatever might be the remedies ultimately adopted, the suggestion that has been made in some quarters that marriages held between parties below the minimum legal ages that would be laid down should be declared invalid seems to me to be preposterous. That would be about the best way to jeopardise the whole movement for the reform of our marriage laws. It will make reform so unpopular that it will have little effect on the life and conduct of the people. Marriage is the foundation of human life and society and we cannot afford to play fast and loose with it. A Hindu marriage is a sacrament and it must be beyond challenge by any temporal authority. Any such drastic step will be a direct, brutal and frontal attack on religion which will excite the deepest disaffection throughout the country and no alien government would dare to face such a terrible risk.

Another grave objection to such a drastic remedy lies in the future of the girl whose marriage is annulled. What about that unfortunate girl? In 99 cases out of 100, she would have no hand in her marriage celebrated below the legal age—the responsibility will lie almost wholly on others—and yet no one would suffer more terribly for it than the poor girl herself. It might be said that considering the drastic penalty, parents and guardians would be very careful not to violate the law. But considering the extreme illiteracy of the vast majority of the people, their intense conservatism, the traditions of their lives, and the influence of caste, custom and priest-craft upon them—considering all this it would be asking for too much to hope that all parents and guardians would be careful. There are laws against crimes in every country of the world but have crimes ceased anywhere in the world? What guarantee is there that because there is a penalty, there would therefore be no crime? Penalty has never prevented or abated crimes. In

this case, the penalty proposes would have a deep and disastrous effect on the entire fabric of society: it will be an earthquake that would pull down our society to pieces. Such a shock dose of penal legislation will be preposterous—specially in India.

As Mr. M. S. Aney has very beautifully pointed out in the Legislative Assembly if certain ceremonies prescribed by the Sastras for a valid marriage are gone through the parties acquire the status of married persons and there is no power which can rob them of that status. If we attempt to do it, it will excite the most bitter opposition and it will be a serious breach of faith—a direct negation of the Queen's Proclamation and it will be a dangerous attack on religion. We can punish the parties heavily—those who are responsible for the marriage—but we cannot, we dare not take away their status. To women, specially in India, this status has a supreme value in their lives—more valuable than anything else in this world.

Supposing, for one moment, that we really took away the status, let us look at the consequences. If any such marriage is really annulled, the girl under the law would be legally unmarried. Yet, in the present state of our Society such a girl can never be married again. For the rest of her life, either she would have to remain unmarried or—what is far worse—she would step into prohibited territory and sink in shame. As Aney pointed out “it will create a new form of widowhood—widowhood *de jure*—in addition to the widowhood *de facto*”. It will thus create unmarried husbands and unmarried wives. This will produce one or the other of the following results:—

(a) The parties whose marriage has been annulled may treat the law with open contempt and live as husband and wife, as if they are properly married. Such a contempt for law would not inspire respect for it: nor would it make the law popular. It will create a social sore in society and the example of a large number of unmarried people living as husband and wife would not be conducive to social welfare. Lastly, what about the children of such unmarried unions—the innocent babies whom law would stigmatise as bastards with all that it involves? It would be too shocking to think of it.

(b) The parties may submit to the dissolution of the marriage and the boy may be remained later on, elsewhere and enter into a valid legal marriage living the girl unmarried for the rest of her life—passing a life of widowhood *de jure*. Who is going to maintain her or look after her for the rest of her life? The miseries of child—widowhood are already so big in India: let us not add still more to the total quantum of it.

(c) The girl, unable to find another legal husband may sink into shame. We had better not reform our marriage laws if its only effect is to swell and strengthen the very system of prostitution which laughs at the sacred institution of marriage.

Thus anyway, the social results will be disastrous. It will destroy all bonds of love and affection between the parties. Marriage without love would be prostitution. As Lindsey puts it “a person who marries without love contracts a debt which he cannot repay”. The law will be ignored and it will create unmarried father and unmarried mother. The wife will be the unmarried prostitute of the husband and the children will all be illegitimate. It will create a social revolution. We do not want the worst types of social vice prevailing in Europe and America amongst us. We do not want a disruption of our society. The first need of human society is the stabilization of marriage: for through the stabilization of marriage will come the stabilization of home and the stabilization of civilisation. Such a drastic remedy must therefore be ruled out as impracticable and dangerous.

(B) Another suggestion has been made that early marriages may be permitted but a bond might be taken from the parties to keep husband and wife apart from each other until the minimum ages are passed. I should think that such a suggestion would be ridiculous, ineffective and worse than useless. It would be a legal encouragement to lies, chicanery and fraud. It will be difficult to enforce it and in 100 per cent. cases it will never be enforced. Let us insist on the realities of the

situation. Sex is a biological fact. The sex-hunger is also a biological fact—neither moral nor immoral; neither legal nor illegal. We must take sex as much for granted as the weather or the stomach. Sex-hunger and the hunger for food are both natural and we cannot condemn the one without condemning the other. It is because sex-hunger is a biological fact that society in all ages and in all countries have always sought the rationalisation of sex through social codes and conventions. The search for sex-thrills is always latent in human minds. It is because of this that society has sought social safety and stability by providing the institution of marriage for the canalisation of human instincts. We cannot, we dare not put the sex in chains. The witchery of a young girl's physical charms would blow out such a bond into atoms—especially where the young girl is a man's legally wedded wife even though she may be under age for the time being. In his search for sex-thrills, it will be only a few steps from minor sex experiences to the climax of sexual consummation. The whole suggestion seems to me to be ridiculous and absurd.

These two remedies being ruled out as impracticable, I would briefly indicate the remedies that I would suggest. These are as follows:—

(1) The minimum ages of marriage should be legally fixed for boys at 24 and for girls at 16.

(2) The age of consent should be legally fixed thus:—

Intra-marital . . . . .	16
Extra-marital . . . . .	21

(3) A stringent penalty is necessary to enforce the above. But to prepare the public for it—specially the mass of illiterate people—for the first few years after the law is passed, say seven,—punishment ought to be light and by fines only. After seven years—by which time the law would be more widely known and we hope, more widely appreciated—the maximum penalty should be imposed. All parties to the marriage—except the girl, who must be a mere tool in the hands of others—must be punished. The parents are the chief offenders and the father or guardian on both sides—but not the mothers, who are also mere tools in the hands of their respective husbands—must be punished. The priest who celebrates the marriage and the matchmaker who arranged it—in fact, all the people who are either the active or the silent partners of this unfortunate business must be made liable for the breaches of law and must be adequately punished. The boy—but not the girl—must also pay the penalty. If a boy is fit to be a husband or a father, he is fit enough to go to jail. After, say 21, the boy alone should be held liable for 21 is a sufficient age of discretion for responsible action. If the father is dead and the mother is the guardian, she should be held liable.

Mere fine will not do. The fear of imprisonment would be the most effective way of enforcing the law. Mere fine will keep the richer classes out of the limits of law. Whipping, imprisonment and fine—all the three would be needed to get the most and the best out of the law. The exact form and the size of the punishment must be determined by the circumstances of each case and must be left to the discretion of the court. The more cultured the family, the higher ought to be the punishment. The imprisonment need not be long—one month or, in some cases even 15 days, would be quite ample for the purpose. The fact of the imprisonment would be the greatest deterrent—its period would be immaterial. In that case, the sentence of law need not be vindictive—it ought never to be vindictive. Just as much as may be really necessary would serve the objects of law. It is necessary to guard against vindictive legislation.

The fines realised should be used as a propaganda fund to popularise the law and to advertise it widely. The State should prosecute on the complaint of any interested person—the word “interested” has to be carefully defined—or of any doctor or of any duly registered and recognized women's association or social reform association. Unless these associations are properly recognized, there is a great risk that bogus associations might grow up which would be controlled and utilised by designing people to wreak private vengeance out of private malice.



There should be a preliminary enquiry by a first class magistrate to find out if a *prima facie* case really exists before prosecution is started. This enquiry—but not the trial—should be held in camera. The trial itself would be a great propaganda. Parties would be adequately protected against frivolous or malicious complaints by the preliminary enquiry held in camera. Where any definite malice is proved against any complainant, he should be dealt with under the ordinary provisions of law. It may be difficult—and certainly very expensive—to set up special tribunals or matrimonial courts for the trial of these cases. In that case, only responsible magistrates should be specially empowered to try these cases. Such cases should not go before the advisory police courts or police magistrates.

(4) To prevent needless complications in such trials and to enforce and serve the real purpose of the law, the age of every girl at the time of her marriage must be certified by a competent lady doctor.

(5) All marriages should be registered. This and the point (6) below lie at the root of the reform.

(6) All births must be compulsorily registered—so that, after a short period of say 16 years, there would be no further trouble in ascertaining the ages of girls and boys also. The registration of births would provide the best evidence of age. When such an evidence is available, the examination by a lady doctor suggested in (4) above would be unnecessary. Without such a convincing and definite test of age courts will always grope in the dark as to the ages of the parties before them. It is always difficult to ascertain the real age of girls because the physical developments in proportion to their ages vary in different places and in different communities. Medical evidence as to the age of a girl at, above or below puberty can seldom be exact. Registration of births will save all these troubles in future. After a certain period—say 16 years from now—if registration of births is made compulsory at once, no marriage should be permitted without a certificate of birth.

(7) Government should be empowered to make rules consistent with the purposes of the law and by means of such rules, the admission of married students in high schools and in the I. A. and B. A. classes of the Universities should be prohibited—after a reasonable period of notice, say 5 years. Further, when a man is convicted under the penal sections of the law, he should be debarred from government service, government contracts, franchise and similar other privileges.

(8) Government must give liberal help to non-official agencies to carry on a vigorous educative propaganda in favour of the reforms. It will go a great way to educate people in right lines.

## VII.—CONCLUSION.

I must apologise for the long note: the tremendous importance of the subject will be my excuse for it. I have stated the whole problem as thoroughly as I could do it. Facts are facts and they are bad enough in India in all conscience. The evil is admitted and the size of the evil is very great indeed. India has gone without any social leadership for ages and in the policy of drift which followed, there had been no opportunities to keep insane prejudice under control. The result has been that prejudice has run riot and it has worked havoc in the social life of the community. If there had been any real social leadership in the country, these evils would have been removed long ago.

We can't argue about facts—however ugly they might be. We have to take them as we find them. We must insist on the realities of the situation. To oppose all reforms on the plea of the *Sastras* only cannot possibly be the height of wisdom for a great people. Any man who attempts to do it must be hopeless in his study of human equations. We cannot suppress a volcano by paper edicts. We must have freedom to revalue our old social labels and we must have enthusiasm for the deeper values of life. When facts collide with theory or theology, we have to face facts. If we don't deal with the facts, as we find them, they will very soon deal with us. We must either get on or get under. Health and life first: prejudices next and last. There is yet time to save a great people and the Age of Consent

Committee can do it. We are a dying race and the reasons for it are clear as daylight. The logic of facts is dealing remorselessly with us. Let us prefer facts to formulas. Let us not put wrong values on vital things.

The entire womanhood of India—after age-long agony is crying aloud for a remedy. Their wrongs are crying across the ages.

Maternity is a cosmic thing. But we had run amok with it—and what a price we have paid in blood and tears! What a harvest of misery and agony we have reaped! The Age of Consent Committee has the power to deliver the goods—to right the wrongs of our womanhood.

Let each one feel that the life of his precious little darling—his infant daughter is at stake and that it is up to him to save her from an early grave:—

Take her up tenderly

Lift her with care

Fashioned so slenderly

Young and so fair!

(Hood).

If we discharge our duties as fathers, can the remedy be long in coming? we want plenty of sunshine in their lives. Light, we want more light for these infant souls. The harvest of a happy human soul will yield treasures richer than all the gold mines of the world. In an unequal contest with the forces of a savage social code, these infant souls are fighting—fighting alone—worn to the bone and they look to us for help. Who amongst us can afford to sit tight and be the silent spectator of this tragic human drama? Let us, by all means make them level for the game.

God give us tall men who can live above the fog and can take clear visions. The Government has a serious responsibility in the matter. The moving finger writes and having writ moves on.

While Humanity is marching forward in all countries in all parts of the world, what answer shall the Government give, what formula shall they repeat what excuse shall they plead, what false equation shall they set up, what a wrong measure of value shall they adopt when in the years to come they are asked—Watchman! What of the night?

There is no wealth but life. Is politics greater than human welfare? Is theology greater than life?

To the Committee, I can only repeat with Carlyle—"Produce, produce, were it but the pitifulest infinitesimal fraction of a product—produce it in God's name."

**Written Statement, dated the 8th October 1928, of LALA BRIJ KISHORE  
SAHIB, Acting Chairman, District Board, Unao.**

With reference to your letter No. 42-A.C.C., dated July 26, 1928, I have the honour to inform you that your letter was considered by the Board in its meeting held on September 26, 1928. In its opinion the boys at the age of 20 and girls at 15 be considered as mature.

**Written Statement, dated 3rd October 1928, of Mr. K. P. UPADHYA,  
B.A., LL.B., Secretary, Sanatan Dharam Sabha, Mirzapur.**

1. The people do not wait for statutory age. The consummation of marriage (*Garbhadhan*) is performed on the attainment of puberty and hence there is no dissatisfaction.

2. Further raising of the age would seriously affect the religious susceptibility of the people and cause widespread dissatisfaction. Making a further advance is not prudent or justifiable.

3. Crimes of rape or seduction not frequent in this part of the country. I do not think the raising the age of consent to 14 years succeeded in preventing or inducing cases outside marital state. Improper seduction of girls might have been affected to a certain extent. Prompt action by the police to apprehend the culprits seems to be the only means of stopping these offences.

4. I do not think the amendment of 1925 raising the age of consent within the marital state to 13 years been effective in protecting married girls against cohabitation within the prescribed age limit (a) by postponing consummation of marriage, (b) by stimulating public opinion in that direction or (c) by putting off marriage beyond 13 years.

The religious sentiment of the people requires that the marriage of girls should be performed before puberty and consummation on the appearance of 1st menstruation.

I do not think any steps are required which would interfere with the religious sentiments above referred to.

5. In our part of the country the usual age at which girls attain puberty is between 12 to 14 years specially among the Kols, Musahars and some of the lower classes of the Hindus. Generally girls of labouring classes attain puberty at a later age say at 15 years.

6. Cohabitation is not common before puberty. Cohabitation takes place before the girls complete 13 years if they attain puberty before that age. None of these cases come to court. Cohabitation before puberty is not uncommon in this part of the country specially among dancing girls. Cases have been reported when such girls were raped and courts have punished the miscreants.

7-8 Consummation of marriage after puberty is enjoined by religious injunctions. Hindu Sruties enjoin certain religious ceremonies called "Garbhadhan" on the 1st happening of puberty, all Hindu Sastras refer to this ceremony and its uses and objects are explained in all books. Many ceremonies have to be performed. The husband and wife have to fast and Gods have to be worshipped and Shraddhas to be performed. The Mantras that have to be recited on this occasion conclusively establish the point that "Garbhadhan" has to be done on the 1st menstruation. I quote one of the Mantras from Bhavadeva which are to be recited on this occasion. O thou eternal Sun, thou art the creator, the preserver and destroyer of this Universe. I offer you this oblation on the first occurrence of menstruation. There are a number of Mantras mentioned by Bhavadeva which all mention "1st occurrence of the Menstruation."

The Ashwalayan Grihya Parsishta Chapter I clearly enjoins that the ceremony has to be performed on the 1st occurrence of menstruation. "Garbhadhan" coincides with consummation of marriage. It has to be done within 16 nights after the first menstruation. "Garbhadhan" is usually performed in this part of the country, all genuine Hindus observe this ceremony. Its antiquity dates from the oldest times, though millions of years and through cycles of ages, this practice has been observed in our country continuously without any intermission. In all religious books whether they be Vedas, Smritis or Puranas, this ceremony has been emphatically insisted on. By its omission one incurs sin and the progeny born of him becomes unholy and corrupted in the eye of the Shastras.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

10. No definite age can be fixed as regards it. Puberty which varies with physical vigour and development, is the only point to be taken into consideration. All girls attaining puberty can give consent to cohabitation.

11. I have not come across any case in which cohabitation after puberty resulted in injury to health or prejudicially affected her progeny.

12. I do not think consummation after puberty can be said to be early consummation. In this connection I would invite the attention of the Committee to pages 10 to 12 of the pamphlet published by Babu Charu Chandra Mitra, Attorney-at-law.

I quote from the Rationale of early marriage system by V. P. Krishnamacharya, page 35. Take Madras city itself where Corporation authorities lately published their death rate returns for 1926-27. These figures show clearly in the most "early marriage community, i.e., the Brahmins 'infantile' mortality is the lowest."

13. Since the amendment of 1925 I do not think there has been any further development of general public opinion in favour of the extension of the age of consent (Marital or Extra-marital).

14. All favour consummation on the attainment of puberty.

15. There have been considerable difficulties in determining the actual age of girls in connection with offences under Section 375, Section 376 and also under Section 363 of the Indian Penal Code. No doctor can be sure about the age of a girl when there is the difference of a year or so and no two doctors will agree as to the precise age of a girl when the difference of a year or six months is in question. I think the attainment of puberty should determine the age of consent. Medical science can easily determine whether a girl has attained puberty or not, and extraneous evidence will be much more reliable if menstruation is fixed as the limit.

16. No body whether a medical or a layman can positively swear whether a girl is 13 years 6 months or 14 years. It is impossible for any Jury to rely upon such evidence. The difficulties in determining the age will not be reduced if age of consent is raised to 14 years as above.

17. I do not think it is at all necessary if puberty is fixed as the age of consent. I would separate extra-marital offence from marital offence on the ground of prevention of social evil of early prostitution and also to prevent kidnapping to different provinces.

The punishment for extra-marital offences should be severe such as whipping and rigorous imprisonment to ten years.

18. A slight difference may be made in the procedure of trial of extra-marital and marital cases, namely that the consent should have the option of recording the Evidence of the prosecution in Camera to prevent demoralising effect on the public.

19. Not necessary if puberty is made the age of consent.

20. I would not prefer any of the alternatives. People consider their religion as sufficient safeguard which enjoins:—

(1) Marriage before puberty ;

(2) Consummation on the attainment of puberty.

21. I am against the codification of any penal law in such matter. The normal evolution in all matters, religious and social, should not be interfered with by legislation. The civil law should not interfere with the marriage law, marriage being a sacrament with the Hindus.

### **Written Statement, dated the 10th August 1928, of Mr. RAGHU RAJ SINGH, Pandaria (Banda).**

1. I think there is no dissatisfaction with the state of law as to Age of Consent as contained in sections 375 and 376, Indian Penal Code, in this part of the country; but I believe that in Bengal and other parts of India there is some dissatisfaction as to the present state of law of Age of Consent outside marital state and the raising of the Age of Consent in such cases to 15 will be welcome in all parts of India. But I do not think that there is any necessity of change of law as to married girls except in matter of procedure.

2. I want to make an advance as to Age of Consent in cases of girls outside the marital stage. The circumstances which justify such a change are the following. In some parts of India where the climate is very warm and moist and also where malaria prevails girls are physically weak and so are their guardians, cases are not uncommon in such places of girls of young age being seduced or forcibly raped by stranger persons. Police challans in such cases become unsuccessful as it is very difficult to prove whether girl is 13 or 14. It is better to raise the Age of Consent in such cases to 15. There will be less difficulty in proving this age.

3. Crimes of seduction or rape are rare in this part of country. Girls here are physically strong and their guardians are able to protect them. Still a further raising of the Age of Consent outside marital stage to 15 will be welcome here also.

4. In my opinion the amendment of law which was effected in 1925 has undoubtedly stimulated public opinion in that direction amongst educated people and those who are more civilised. In this part of the country which is less civilized change of law has not been very effective in forming public opinion as few people noticed it. It is I believe the economic condition of the people which has the effect of raising the age of marriage and age of consummation of marriage. In my zamindari principal inhabitants are Gauds and Chamars. Amongst Gauds child marriage is not rule but exception. Amongst Chamars both child marriage and adult marriage prevail. At Pandaria village which is headquarter of my zamindari there is a girl school which is maintained at my expense in which number of students is 48 out of which three only are married.

5. Age of puberty amongst Gaud girls is 14 or 15, amongst Chamar, Raut, Teli, Kurmi it is 13 or 14. Northern portion of my estate is hilly and full of forest. Gauds live there. Southern portion of my estate is plain country. The other castes mentioned above live there.

6. I do not think that cohabitation is common in this part of the country before puberty. In these castes amongst which child marriage prevail cohabitation after puberty, i.e., 13 or 14 is common. These cases seldom come to Court.

7. I do not think that people here who allow their girls and boys to marry at early age are guided by religious injunctions. Brahmins and a few high class Hindus only are guided by Shastras, others are guided by customs and by economic conditions. Chamars here are not guided by Hindu Shastras, viz., Manu Smritis or other Hindu laws there was a reformation amongst them and they revolted against Brahminical law. They adopted sacred thread and their prophet Ruidas preached equality with all high class Hindus and so adopted some of their customs. Brahmins and other high class Hindus here are of course guided in this matter by religious injunction. According to Manu-Samhita if a girl of 8 is given in marriage then the father obtains the same benefit as the gift of the Gouri (Goddess).

8. *Gaona* ceremony usually performed in this part of the country where early marriage prevails soon after the attainment of puberty. The adult marriages *Gaona* and marriage sometimes take place simultaneously, viz., immediately after marriage.

9. I think attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage, considering the climate of India I am of this opinion. This is also the custom which prevails.

10. I think in India a girl will be able to give intelligent consent to consummation of marriage after she attains the age of puberty. This age is not same with all classes of people and in all parts of India. In warm and moist Provinces such as Bengal, Orissa, etc., this age appears to be 13 or 14. In hilly and cold climate 15 or 16.

11. I have not come across with any case of cohabitation before puberty or immediately after puberty resulting in injury to the body of the girl. Such cases are generally hushed up.

12. Yes, in some parts of India early consummation and early maternity is responsible for high infantile mortality; but in my part of country although early marriage prevail in some castes but early consummation and early maternity are not very common. Pandaria estate is comparatively healthier than other parts of India and there is no parda for girls of Hindu religious and Chamar castes. Hence they are healthy. Mohammadan inhabitants of my estate are very few in number. They, of course, observe parda.

13. Public opinion as to Age of Consent has not been further developed in my part of country and there is no agitation or demand of public in this respect.

14. Women in my part of country do not favour early consummation although to early marriages certainly prevail in some castes, such as Teli, Chamars, etc.

15. In my opinion difficulties certainly arise in determining age of girl in cases under sections 375 and 376, Indian Penal Code. I am in favour of raising the Age of Consent of girls outside marital stage to 15, this I think will minimize the difficulty.

16. This difficulty will be removed or minimized if the Age of Consent outside the marital stage is raised to 15.

17. There is already done separation in the extra-marital and marital offences with respect to procedure and punishment which appears to me to be adequate except that I would suggest however some change in the procedure as stated below.

18. The only change in the procedure which I would suggest is that in trying offences of marital stage complainant may be any near relation of girl and personal appearance of the girl may be dispensed with by magistrates as is done in cases of pardanashin ladies. I suggest this because these offences are generally hushed up to avoid appearance in Court of the girl-wife.

19. As regards collusion to protect the offender the safeguard which I suggest is that the child-wife in such cases should be kept outside the control of the offender and his relations so long as the case remains pending. As regards improper prosecution the ordinary safeguard for malicious prosecution is enough.

20. I think legislation about minimum age of marriage is likely to be more effective than the penal legislation fixing a higher Age of Consent in marital cases. Because the cases of marital offences are generally suppressed and hushed up. Public opinion will certainly prefer the former.

21. Progress of social reform by means of education and social propaganda is certainly advancing in civilised parts of India; but as all parts of India is not benefited by this way, and as such progress is slow, I think, it is desirable to strengthen penal law in the manner already proposed.

## Notes on visits to Villages by the Age of Consent Committee, Lucknow.

The Committee visited Gosainganj, a town situated 14 miles from Lucknow—on the morning of Sunday, the 20th January 1929.

The town contains a population of 3,000 persons comprising Hindus of different castes and about 90 families of Muhammadans. Over 100 persons were present at the enquiry including, among others, Babu Sarju Prasad, the Sarpanch of the Notified Area, Babu Radhey Lal, one of the Pandas Lala Radhey Lal, Cloth Merchant, Mr. Jawad Ali, the *Mukhiya* of the village, Mr. Hussain Bakhsh, a teacher in the school, and some of the local officials.

On enquiry, Sat Narayan, *Brahmin*, stated that in his community girls usually married at the ages of 14, 15 and 16 years, that owing to the demand of dowry marriages were often delayed till after puberty, that marriages after puberty were not condemned or considered reprehensible, and that the Gaona ceremony was generally performed 3 years later. He further said that over 50 per cent. of the marriages were celebrated after puberty and that those celebrated at the ages of 12 or 13 were few and in their cases trouble often arose at maternity leading to puerperal fever (*prasuti*) and other diseases.

Baldev Prasad, *Maha Brahmin*, said that the girls of his caste were usually married at the age of 12 or 14 years.

Sarju Prasad, *Vaiśya*, said that in his community marriages of girls generally took place at 12 to 14 years and the *Gaona* was celebrated at the time of marriage if the girl was 14 years old or else 3 or 4 years later. He also said that cases of maternity before 14 were rare and that if a girl gave birth to a child at that age or earlier the child and mother suffered.

Radhay Lal, *Kayastha*, stated that in his community girls usually married between 12 to 14 years and that *Gaona* was generally celebrated with the marriage. He further said that in the city, girls were usually married later between the ages of 15 to 17 years and at times even at the age of 20 years. He did not profess to have seen any maternity in his caste before the age of 15 years.

Thakur Prasad, *Ahīr*, said that in his caste girls were mostly married between the ages of 5 to 8 and where the father was poor even much later at 15 or 16 years and the *Gaona* was performed 3, 5 or 7 years later generally after puberty and at times even before puberty. He also said that if the girl was young she would come back after a few days and that in about 10-15 per cent. cases consummation took place before puberty.

Mahabir *Kurmi* said that girls of his caste were usually married between the ages of 5 to 10 years and sometimes even at the age of 11 years and that the '*Gaona*' ceremony was observed 2, 3 or 5 years later when the girl had attained puberty and was 13 to 14 years old.

Tika *Lodh* stated that in his caste girls were usually married between the ages of 5 to 10 years and that poorer people had often to wait longer. He further said that the *Gaona* usually took place after puberty at the age of 12 to 13 years.

Hullu *Kori* said that in his community the girls were usually married between the ages of 5 to 10 years and at times even when the girl was 11 or 12 years old and *Gaona* took place at the age of 14 and even later.

Madai *Pasi* stated that the girls of his caste were married at the ages of 4 to 5 years and that the poorer people had to wait till the girl was 8 or 10 years old and the *Gaona* took place after puberty when the girl was 12 to 13 years old.

Bandi *Chamar* stated that he was the Punch of his caste and that the girls in his community usually married between 3 to 7 years age but the *Gaona* took place at the age of 12 to 14 or 15 years.

Ghuru *Bhangī* said that the girls of his caste usually married at the age of 9 to 10 years but in the case of poorer people the marriage was often delayed and that the *Gaona* took place 3 years later.

As regards the *Muhammadans*, Hussain Bakhsh, Jawad Ali and Juman Manihar stated that girls were married among them when they were 16 or 17 years old and that the Rukhsati ceremony took place immediately after marriage. Wazir Halwai said that the usual age of marriage of girls in his community was 14 years and the practice regarding Rukhsati ceremony was the same. Among Bhatiyaras and Kunjras the usual age of marriage was stated to be 14 or 15 years.

The people present generally admitted the evils of early consummation and early maternity, and while the Brahmins, Kayasthas and Muhammadans said that they had no objection to legislation fixing 14 as the minimum age for marriage, the Vaishyas and most of the men of the lower castes said that they would not object to the age of 12 years being fixed for marriage and 14 for consummation; and they urged they would have difficulty in keeping the girl in the house very long without risk and would be unable to put off marriage when the parents were sick or old, unless the Government or Panchayat provided the funds for paying the penalty if a girl went wrong or for the expenses of the marriage, if the parents died.

Some of them also said that they have spoken to people not to marry their girls early, but the caste panchayats were unable to dissuade them or to prevent early marriage without legislation.

It was stated by Akhtar Ali, the Bakshi of the village that the practice relating to the registration of births and deaths was that the sweeper reported them and they were recorded by him and sent to the Health Officer.

#### Lucknow.

#### II.

Mrs. Nehru and Dr. Beadon attended a pardah party convened by Rani of Kasmanda on January 19, 1929. About 26 ladies, Hindu and Moslem of higher class, were present.

In answer to questions the ladies stated that—in villages marriage is contracted at early age from 5 to 12 years. Very rarely among Hindus is a girl unmarried above 12.

Among Muhammadans the girls are married at 12, 13 and 14 amongst ignorant people.

Ceremonially girls are sent to the husband's house 3-5 years after marriage but consummation does not take place then. Those girls who are married early have Gaona at 13, 14 years. But most of the ladies say that consummation in villages is absolutely regardless of puberty except among sensible folk.

*In Lucknow City.*—Mohammedans are married among rich between 19 to 22 years. Poorer Muhammadans at 16 to 17 years. Hindus are married later at 14 to 16 years among educated. The poor and uneducated are married even at 7 years. One Brahmin lady says that Brahmins used to be married at 10 and have Gaona at 17, but now marriage is later generally even at 20 years. This also obtains among the poor on account of economic pressure, this is because a very heavy dowry is demanded for the girl. One Kashattriya lady says that they desire that girls should be married at 11 to 12 years but cannot do so on account of dowry, they therefore marry the girls at 13 to 14 years or may even have to wait till 20 to 22. One lady says the girls seldom remain unmarried beyond 15 years. One bania lady says there are still people in the bania community who believe in the sanctity of pre-puberty marriage, but through economic pressure they have to keep them unmarried till 17-18 years. One lady says she has seen in villages Hindu girls married between 2-7 years in such cases Gaona is at 12-14 years. Among villages Mohamedans are married between 9-12 years, consummation takes place after 2-3 years. They sometimes even keep girls at the father's house till 18-20. The youngest age at which maternity has been seen is:—

- 1 case 12 years: baby died, mother well.
- 3 cases 13 years: in one case both mother and child well;  
in one case mother died, child lived.
- 1 case 14 years: 2-3 years ago—both well.



*Law.*—The ladies were unanimously of opinion that a law fixing age of marriage at 16 is necessary. Exemptions may be allowed if necessary. One Kanyakjot Brahmin demands marriage age at 20 and states she has married her own 3 girls at 20 years.

*Punishment.*—In case of breach of law parents of both parties should be punished. If the boy is over 18 years, he also should be punished. As regards punishment 10 ladies demand imprisonment for one year, 13 ladies advocate fine according to means of parents. Junior Rani of Kasmandi made some suggestions as to trial, said that women should be employed to assist girls and submits a statement.

*Gosaingaraj, Lucknow.*

### III.

Mrs. Nehru and Dr. Beadon interviewed the women of this village on 20th January 1929.

Twelve-fourteen women were present, representing Bhojis, Pasis, Mohammedans, Dhobies, Ahirs, Kahars and Ghosains.

*Bhoji* states that marriage is from 7-13 years according to opportunity. Gaona is 3. 7-9 years after marriage. If a girl is married at 13 consummation takes place immediately.

Maternity at 14 or 15 never earlier, there is no trouble at delivery.

*Pasi.*—Marriage usually 7-9-10 may be as early as 5 years, but never earlier nor later than 12, Gaona 5-7-9 years after marriage, e.g., in marriage at 7 years Gaona 7 years later. Gaona never before puberty. Caste considers it sinful if puberty occurs in father's house. The girl does not go to father-in-law's house before Gaona. Motherhood occurs generally at 14-15. No trouble to mother even if it occurs at 13.

*Ahir.*—Marriage at 5-7-9, never earlier than 5 nor later than 11. Gaona takes place after puberty, girl never sent to husband's house before Gaona. Puberty at 18 motherhood not seen before 20! Statement of age probably not reliable.

*Kahar.*—Marriage at 13-14 never earlier than 11 years, nor later than 14. They try to perform prepuberty marriage.

Gaona usually about one year after marriage invariably after puberty.

Motherhood seen at 16, heard of at 15. No trouble seen at delivery.

*Mohamedan Suni.*—Marriage at 10-11 years before puberty, it is thought wrong to have puberty in father's house. "Rukhsati ceremony" at 15-16 years, after puberty, never before.

Motherhood seen at 14-15. Trouble is usual at such an early age.

*Dhoty.*—Marriage from 7-12 years. Gaona 7 years after marriage. Girl sent to husband's house before menstruation. Motherhood seen at 14-15, no trouble.

Kahar and Mohamedan say this is an evil custom and girl married early is put to great trouble in husband's house. It should be stopped and it would be good if Sirkar made a law.

The other women say there is no trouble and would have the matter left to the discretion of the people. It will be very difficult for a widow if she is left with an unmarried daughter. They also pointed out that as consummation of marriage was never before puberty, mere marriage did not matter.

## AJMER-MERWARA.

### Written Statement of Kunwar CHAND KARAN SARDA, Secretary, Hindu Sabha, Ajmer.

1. Yes, there is dissatisfaction.

2. The circumstances which in my opinion justify making an advance on the present law, are:—

- (1) Owing to the Age of Consent not being raised, girls have to submit to the passions of their husband against their consent without knowing the fatal consequences.
- (2) Early consummation leads to several deaths of girl-wives in the first child-birth.
- (3) It is one of the causes of appalling infant mortality. 33 per cent. children die before they attain age of 12 months.
- (4) This early consummation contributes to the spread of tuberculosis and eternal and lifelong misery.
- (5) The advance in age has become necessary even in non-marital cases in order to protect our wives, daughters and sisters from seducers at an immature age.
- (6) Age of Consent must be substantially raised to prevent early widowhood and improve the physical and mental development of people.
- (7) Early consummation debilitates the whole nation and is gradually making the youths unfit for military training.
- (8) Early consummation has a significant connection with education and this is why girls are debarred from taking higher education.
- (9) It is simply horrible to hear or see the pangs of sufferings of child-mothers, the death of babies and their lingering sickness and poor health.
- (10) On account of advanced education, people have begun to realize that the present law with regard to the Age of Consent is inadequate.

3. In our district there has never been any reported case of rapes by husband, although early consummation with girls of 12, 13, is a well-known fact and girls of 13 are seen with babies in their laps.

There has been an average of only 2 cases of rape per year according to the Ajmer-Merwara administration report. Under section 376 Indian Penal Code during the years 1925-26, 1926-27 there has been an average of about 8 kidnapping cases in an year. But before the age was not raised to 13 the administration report says that there were 3 cases of rape in 1924-25.

Yes, they have succeeded to some extent in preventing or reducing cases of rape outside the marital state.

The measures I propose to make the law effective is to make the police more vigilant to detect such cases and getting them punished.

4. (1) No.

(2) Yes, it has stimulated public opinion in that direction.

(3) No

The only step which I propose to make it effective is the passing of Mr. Sarda's prevention of Child Marriage Bill as passed by the select committee fixing the marital age at 14 years for girls.

5. 14 years is the usual age when the girls attain puberty in our part of the Country. No, it does not differ in different castes, communities, i.e., classes of Society.

6. Yes, cohabitation is very common in our part of the country in all classes except Rajputs before puberty, soon after puberty, and before the girl completes 13 years of age because the child marriages are so very common. No, none of these cases come to court.

7. Yes, to religious injunctions as well as to custom. These religious injunctions are believed owing to ignorance of masses. Orthodox Pandits' law is still believed by thousands of persons and they regard it as a sin not to marry their girl before 12 years. The penalty which the Shaloka **अष्टवर्षात् भवेत्गौरो नववर्षात् च रोहिणी** prescribes is going to hell. But this "Shighrabodha" injunction is contrary to religious injunction. "Shushrut" says:—

**उन षोडश वर्षायां प्राप्तः पंच विंशतिम् यद्याधत्ते पुमान् गर्भं  
कुक्षिस्थः स विपद्यते । सुश्रुत शा. अ. १० जातो वा न चिरंजीवेदजीवे  
दुर्वलेन्द्रियः । तस्मादत्यन्त वाङ्मायां गर्भाधानं न कारयेत् ।**

**सुश्रुत शरीरस्थानि अ. १**

which says that marriages of girls should never be consummated before 16 years. If they are consummated before 16, the baby dies and even if it is born alive he will always remain a weakling.

8. Yes, Gaona ceremony is now performed in name only. Usually the girls are sent to their husband's houses after marriage without waiting for the Gaona ceremony. Formerly the Gaona used to be performed after the attainment of puberty, but now that practice is gradually dying out. Some persons perform marriage and Gaona ceremonies within an interval of few days.

9. No, the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. 16 years is the age when the physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. 18 years is the age when a girl in India would be competent to give an intelligent consent to cohabitation with a due realization of consequences.

11. Yes, I know of several cases in which cohabitation before puberty or after puberty, but before full physical development of a girl resulted in injury to her health, body and prejudicially affected her progeny. But the cases being of my friends and relations I cannot give details of age and injury sustained.

12. Yes, early consummation and early maternity are responsible for high maternal and infantile mortality and the intellectual and physical progress of the people is vitally affected by it.

13. Yes, there has been general further development in my part of the country in favour of the extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925. This is evident from the meeting of the Ajmer Hindus held on the 8th August 1928 to consider the Gour's bill and it was unanimously supported.

The copy of the Resolution is herewith attached.

14. Some ignorant women favour early consummation of marriages for their children, but the educated ladies oppose it.

15. Yes, there have been difficulties in ascertaining the age. The only measure now in vogue is the medical examination. The X-Ray examination gives us approximate age. But the Municipal birth registers should be regularly maintained. The difficulty which I have experienced in my professional career is that the Municipal registers only prove that a son or daughter was born to a certain person on such and such date and year. But they do not prove that a particular individual named such and such was born to a certain person. It often happens that 2 years after a younger brother is born and when question is on the fence whether the girl is aged 13 or 14, it becomes very difficult to ascertain by Municipal register because at that time the evidence is given that the birth relates to the younger child born. Hence I propose that one column more should be opened in the birth-register in which the name of the child should also be written. If the child is not named, on the day of birth a letter should be issued from the Municipality to the parent of the children to ascertain the name of the child born after one year from his birth.

16. Yes, it would be materially reduced or minimised if the Age of Consent is raised to 14 years of age.

17. Yes, for marital it should be 2 years and for non-marital it should be transportation for life.

18. In marital trials the evidence should be taken in camera and in other cases the trials should be in open Court except the statement of the raped girl.

19. Yes. In marital, the Deputy Superintendent or Inspector of 10 years' standing alone can chalan a case in other case any Sub-Inspector can chalan.

20. The minimum age of marriage will be more effective provided it is fixed at 16 years, otherwise, both the child marriage bill as passed through select committee and the Age of Consent bill as it stands should be passed. Our part of the Country is more in favour of the prevention of child marriage bill.

21. Social propaganda should be done. If young men and women are asked to read "sex talks to young boys", "sex talks to young girls", "what a young man ought to know", it will have a great educative effect.

I believe in the efficiency of the penal law as well as in educating the masses by social propaganda to secure the object in view, but prefer to rely on the strengthening of penal law by both the bills, i.e., "prevention of child marriage bill" and "Dr. Gour's Age of Consent Bill".

I feel that it is the duty of the Legislature to prevent such heinous crimes.

More social propaganda has very little effect in preventing early consummation. Inspite of last 30 years' agitation, early marriages and early consummation are not substantially decreasing.

In 1921 in Bombay marriages between 10 and 15 were 548 out of 1,000 marriages.

In Madras 234 out of 1,000.

In Bengal 510 out of 1,000.

These figures do not show substantial improvement over previous census figures.

Inspite of opposition by orthodox people the Government should raise the age to guide the people and raise their ideals and standards in every day life.

I am sorry for the opposition of these orthodox people. West is day and night thinking of "race culture" and producing "super man" while we are daily degenerating by this pernicious system of early marriages and early consummation. In non-marital cases the age should be raised to 16 years. No parent would ever like that a stranger should make approaches to his daughter and say that he had intercourse with her consent.

Where a social custom or a religious rite outrages our sense of humanity or inflicts injustice on the helpless class of people the legislature has a right to step in.

This is a heinous crime which is existing under the false pretext of religion and should be immediately put a stop to.

As the Provisions of Penal Code against slavery, forced labour, infanticide, *sati*, etc., had a salutary effect and did a lot for the amelioration of the condition of oppressed people, in the same way penal legislature with regard to "prevention of child marriages" and "Age of Consent" will do immense good to country and especially to Indian women.

### **Oral Evidence of Kunwar CHAND KARAN SARDA, Secretary, Hindu Sabha, Ajmer.**

(Delhi, 10th October 1928.)

*Mr. Kanhaiyalal:* How long have you been practising at Ajmer?

A. Since 1913.

Q. Are you connected with any reform association or any public association in Ajmer?

A. Yes: I am the representative of the whole of Rajputana on the Sarvdeshi Arya Samaj. I am Secretary of the Ajmer Hindu Sabha and I was Chairman of the Reception Committee of the Rajputana Provincial Hindu Sabha.

Q. Are you connected with any other association connected with social reform?

A. Yes; I was Secretary of the Rajputana Social Service League.

Q. To what community do you belong?

A. Maheshwari community.

Q. Has the community been holding conferences periodically?

A. Yes; every year. I presided at the All-India Young Men's Maheshwari Conference held at Pandarpur in the Bombay Presidency.

Q. Was any resolution passed in connection with the marriage age to be fixed in your community?

A. A resolution was passed supporting Sarda's Marriage Bill.

Q. Was there any resolution fixing any age limit for consummation of marriage?

A. No.

Q. Was Dr. Gour's Bill considered?

A. No.

Q. Was it thought then that the present ages would be sufficient to protect girls?

A. That was not brought to the notice of the Conference. If anybody had brought it to the notice of the conference that would have been surely supported.

Q. Is Gaona ceremony observed in your part of the country?

A. It is observed in name only.

Q. What is usually the interval between marriage and Gaona?

A. It is not observed now.

Q. You have recommended in your written statement that the age of consummation should be 16. Would it be acceptable to the Maheshwari community?

A. No; not generally.

**Q.** What age would then be acceptable to them?

**A.** 14 years.

**Q.** And what age for consummation of marriage?

**A.** I have not consulted them about consummation.

**Q.** Will 16 be acceptable to them?

**A.** Many conservative people would not accept it.

**Q.** Would it not be acceptable to the Hindu community?

**A.** Dr. Gour has proposed only 14, and the Hindu Sabha, Ajmer, has supported Dr. Gour's Bill raising the age to 14.

**Q.** Personally are you in favour of 16?

**A.** Yes.

**Q.** You have recommended 18 for extra-marital cases. Would that be acceptable to the people generally?

**A.** In my opinion it should be 18. But the people would support 16 as recommended in Dr. Gour's Bill.

**Q.** How is the system of registration of births working in the country?

**A.** It is not satisfactory.

**Q.** What are the defects?

**A.** We experience great difficulty in finding out the name of a particular man who was say 16 years at a particular time.

**Q.** Do you recommend that a supplementary report should be made giving the name of the child?

**A.** Yes.

**Q.** How long after birth are names given to children?

**A.** Within one year.

**Q.** How is the system working in the rural areas?

**A.** There also it is unsatisfactory.

**Q.** Have you any suggestions to make for improving the system?

**A.** No.

**Q.** There is a general complaint that the law fixing the Age of Consent is at present a dead letter. If you raise the age still higher to 16 would you suggest any measures for making the law more effective?

**A.** I would like the police to be more vigilant. It is owing to corrupt police that many cases do not come to light.

**Q.** Will people have sufficient confidence in the police?

**A.** That is why I have recommended that Deputy Superintendents or Inspectors of 10 years' standing alone can chalan a case.

**Q.** Would you then make cases in marital cases cognisable by the police?

**A.** No; I would suggest that the reports should be made by social associations like the Arya Samaj or the Hindu Sabha, or by the parents or guardians.

**Q.** Would you then say that no complaints other than those of these bodies or persons shall be cognisable?

**A.** Yes; otherwise people will use their personal grudge against other people.

**Q.** Suppose the police receive an anonymous letter saying that in such and such a family such an offence has taken place. Would you then allow the police to interfere?

**A.** In such cases the C. I. D. may privately investigate the case and then take action.

**Q.** In other words you are prepared to make the case cognisable by the police provided enquiry is made by a superior officer?

**A.** Yes.

Q. Would you make any distinction between, the punishment to be awarded in marital and non-marital cases?

A. The law as it is at present is all right.\*

Q. Would you make marital offences compoundable?

A. No.

Q. With the sanction of the court?

A. No.

Q. Even if the age of the girl is above 12 years?

A. It should never be compoundable.

Q. Suppose the husband is 16 years and commits the offence with a girl of 13.

A. I doubt very much if a boy of 16 is capable of such an offence.

Q. But there is no exemption provided in the case of boys of 16 and therefore the law takes it for granted that he is capable of the offence. In that case would you punish the boy and give him the imprisonment which is already provided in the existing law?

A. I would leave it to the discretion of the Magistrate to award punishment as he may deem fit.

Q. Would you make the parents or guardians who are in custody of the girl liable for the offence if they send the girl before the age for consummation of marriage?

A. Such cases will come under the present law under abetment.

Q. If you have a marriage law fixing the age of marriage, would you be in favour of having a system of registration of marriages giving the ages of the parties and other particulars?

A. Yes; I would be in favour provided they consult the municipal registers to see whether the right age is given at the time of marriage. Such registers have not been maintained till now; but I think 50 per cent. of the people will not give the correct age.

Q. You said that the statement of the parents should be compared with the municipal registers. Who would compare it?

A. The municipal authorities who maintain the registers.

Q. But will not that involve additional labour?

A. I do not think so.

Mr. Mudaliar: Does the memorandum which you have submitted represent the views of your Sabha or your personal views?

A. So far as the resolution supporting Dr. Gour's Bill is concerned, it is my Sabha's. The rest are my personal views. But I have consulted the Executive of the Hindu Sabha and they are in agreement with my views.

Q. Therefore may I take it that the executive of your Sabha bears out your recommendation that 16 should be the Age of Consent for marital cases?

A. Yes.

Q. With reference to para. 6 of your statement can you tell us how common is cohabitation before puberty? Witness after he was examined explained that by 80 per cent. of cases he meant cases in which there was disparity of age between the husband and wife. Further that the Rat-Jagan ceremony takes place on 4th day after marriage at the husband's house when the marriage party returns home.

A. In 80 per cent. of cases.

Q. Is it as high as 80 per cent.?

A. In Marwar the custom is as soon as a girl is married the girl and the boy are locked up in a room for the night.

Q. Whatever be the age of the boy and the girl?

A. Yes.

Q. Is it Gaona ceremony?

A. Goana ceremony is not observed here. As soon as the marriage ceremony is over, the boy takes away the wife to his house and on the first night they are closed in a room.

Q. At what age does marriage take place among these classes?

A. 10, 11 or 12.

Q. What is the maximum age?

A. The maximum age is 14; but most of the marriages are at 12.

Q. Is there any belief in the people that there is any religious injunction that marriages should take place before puberty?

A. It is more a custom than religious belief. People believe it should be done.

Q. Then marriages take place very rarely after puberty?

A. Yes. But it is only amongst the ignorant classes. But even they have now begun to realise the evil effects of early marriage.

Q. What would be the percentage of the educated classes?

A. 10 per cent.

Q. At present the age is 13 and you say that 80 per cent. consummations take place before 13 and they do not go to court, and yet it is openly known to the public that these cases do occur. Why do you then suggest a change in the law?

A. I want such cases should come to court; and I want measures to be taken for the police to be more vigilant in regard to such cases.

Q. Even now under the existing law the police can take cognisance of the case if the girl is under 12 years; and under 12 years cohabitation does take place in some cases. Then why have not these cases come to light?

A. It is owing to corrupt police that such cases do not come to light.

Q. If the age is 14, will the police then be better?

A. I have said that other organisations also should be given the right to complain.

Q. Do you think these associations will report such cases?

A. Yes; they will do if they have got the interests of the society at heart.

Q. At present they can do so when the girl is under 12. For the matter of that any individual can do so.

A. These cases are not brought to the notice of the associations.

Q. Do you want then that greater publicity should be given to the law?

A. Yes.

Q. With reference to the resolution which citizens of Ajmer have passed, may I take it that the resolution was passed because they wanted to support the bill and not because they wanted to support the age in the bill, for instance, if the bill had suggested 15 instead of 14 they would have all the same supported the bill?

A. They would not have supported 15.

Q. Before the resolution was passed was there any private discussion as regards the fact of this bill; was the age also discussed or was it only a question of the bill being supported and a resolution being passed to that effect?

A. The age was also discussed.

Mr. Bhargava: I understand that early marriages both of boys and girls are very common in Marwar. It is especially so among the commercial communities, but amongst the Rajputs it is not common. Is that a fact?



A. The Rajput community is not very large. The villages are populated by Jats and they have got the custom of early marriages.

Q. Have you ever seen a marriage of the Jats?

A. Yes; I have attended two or three marriages. In them it is the custom to marry all their girls at the same time. Girls of 4, 5 or 6 or 11 will all be married at the same time.

Q. Do you think that in such cases there is occasion for consummation?

A. No.

Q. You referred to the ceremony at which the boy and the girl are made to remain in the same room for a night. Supposing the boy is 16 or 17 and the girl is 12, do you not think that it is most unlikely that cohabitation takes place?

A. Yes; it is unlikely?

Q. In view of this will you amend your previous statement that in 80 per cent. of the cases cohabitation takes place on the night? You have also said that boys of 16 are incapable of consummating marriage. Will you therefore say that cohabitation takes place only in 10 or 15 per cent. of the cases?

A. It is unlikely that every husband would be of the age of 16 years. The girl might be 11 but the boy may be 18 and he being fit, he might commit the offence.

Q. According to you a boy of 16 is incapable of consummating marriage and a girl below 13 does not generally like the commission of the act. When this Rat Jagan is going on does it not happen that after 15 minutes or half an hour the boy and the girl are let out of the room?

A. To my knowledge they are kept the whole night in the room.

Q. Have you been in such places and have you been there the whole night?

A. I know it from my own personal experience, and I was kept in the room the whole night.

Q. At what age were you married?

A. 13.

Q. May I take it consummation did not take place?

A. No.

Q. Therefore your own personal experience contradicts your statement that consummation takes place in 80 per cent. of the cases.

A. But it does take place when there is disparity in the ages of the parties.

Q. I understand that the system of widow-marriage does not obtain in Ajmer Merwara.

A. No.

Q. Is it a fact that except in isolated cases a widower does not obtain a wife of mature age and a man of 30 or 40 marries a girl of 12 or 13?

A. Yes.

Q. Do you not therefore think that a provision might be made that a man beyond 35 or 40 years of age should not marry a girl below 16?

A. Yes.

Q. You maintain that there is a notion about religious sanction among the people that girls should be married before puberty. Supposing you make the age of marriage 14, then will not this sanction be violated?

A. Yes; it will be violated according to them.

Q. Then do you think that violation of that sanction is not very material?

A. Even if it is 13 it will be a violation.

**Q.** If the age of consummation is fixed at 16 will there be great dissatisfaction?

**A.** It will be almost negligible.

**Q.** Do you personally think that in the interests of the national health it is absolutely necessary that 16 should be the minimum age?

**A.** Yes.

**Q.** A good many witnesses say that the offence should be made non-cognisable and that the police should not be allowed to interfere. Supposing it is accepted, would you like that the reports of such cases might be made by individual or vigilance societies to the District Magistrate and the District Magistrate should then proceed under Section 476 of the Procedure Code?

**A.** Yes.

**Q.** Would you also like that duties similar to those in sections 44 and 45 in respect of certain offences might be cast upon all individuals to report such cases to the District Magistrate and bring the cases to light?

**A.** I have suggested that you should have private associations to do it.

**Q.** In Ajmer Merwara are there any social organisations of the nature you suggest in rural areas?

**A.** They are now going to be made. At present the Hindu Sabha of Ajmer might be empowered to report cases in the district.

**Q.** Then the Hindu Sabha should have influential branches all over the district. Will Government accept your proposal?

**A.** It depends upon the Government. I only say it should be preferable.

**Mr. Yakub:** You say that on account of premature consummation sometimes wives die and you also say that there is an appalling amount of infant mortality. Can you give us any instances?

**A.** I know several cases in my own locality where girls of 12 have been married and have died in the first child-birth.

**Dr. Beadon:** How long after the marriage was the child born?

**A.** Generally it was one year and sometimes one and a half years.

**Q.** How many cases have come to your knowledge?

**A.** I know of about 5 cases in my locality. I hear of several cases in the city.

**Mr. Yakub:** Can you give us the approximate number of cases?

**A.** I know 50 cases.

**Q.** And cases of infant mortality?

**A.** There are hundreds of cases.

**Q.** Is it due to early consummation?

**A.** Yes.

**Q.** At what age did the infants die?

**A.** At all periods; 2 months, 3 months and so on.

**Q.** Are you sure that such deaths were due to premature consummation and not to bad sanitation or other causes?

**A.** There are other causes; but this is the chief cause.

**Dr. Beadon:** Was it among Hindus?

**A.** Yes; I know only about the Hindu community.

**Q.** To what caste did they belong?

**A.** Mercantile community, like the Vysyas and Agarwals.

**Mr. Yakub:** Suppose a boy below 18 is seduced by a girl above 18 to cohabitation, would you then punish the girl?

**A.** No.

**Q.** Why not?

A. I believe in courtesy towards women.

Q. You say that parents shut up the pair the first night. In that case if premature consummation takes place and any harm is done, would you not propose legislation for giving punishment to the parents?

A. Yes; they are abettors and if they come within that definition they must be punished under the ordinary law.

Mr. Mitra: As regards the shutting up of the boy and the girl, is it only for the first night after marriage or is it for several nights?

A. Only for one night.

Q. Is the percentage of disparity of cases very great?

A. Yes; because sometimes a boy of 35 marries a girl of 12. Not only widowers but poor persons also find it difficult to get girls and they marry at a late age girls of 11 or 12. In such cases consummation does take place.

Q. You are for registration of births and you suggest that a column may be left where the names of the children might be entered after the names are given. Do you not think it would be better to lay this obligation on the Chaukidar or other officer who usually registers births than make the parents responsible? Do you not think that when it is their duty to register the births, it should be obligatory on their part to find out the names of children and enter the names in the register?

A. Yes; but if it is made incumbent on both the parties, we can be doubly sure.

Q. Do you not think that Hindus will resent registration of marriages?

A. I do not think there is any harm there.

Q. Do you not think it will be a hardship to ask people to go long distance to register these marriages?

A. If these registers are at all to be kept, people might inform the Patwaris or other local officers. Personally I am not for compulsory registration of marriages.

Q. There is a paucity of cases in intra-marital cases. It has been suggested that instead of having recourse to rigorous imprisonment, the punishment in these cases should be fine merely if the consummation is not attended with actual physical violence. Would you approve of it?

A. The Magistrate has got the discretion either to fine the offender or send him for 2 years.

Q. Do you not think that if the law imposes such a heavy punishment on the man it prevents friends and relations of the man from not bringing the case to light?

A. Relations would not, for the matter of that, like even fine.

Q. To whom would you give the power of complaint?

A. The relations might also complain, though they would generally not do so because they would not like their relations to be punished.

Mrs. Nehru: Do you like that the cases should be made compoundable?

A. No.

Q. What is your reason?

A. Because by making these offences compoundable the man will not suffer.

Q. In whose interest do you want the man to suffer?

A. In the interests of the country and the society.

Q. In what way would society gain by the man's suffering?

A. In this way that persons will not be encouraged to consummate earlier. If these cases are made compoundable, they might be encouraged to commit the offence and there will be no preventive.

Q. Is it in the interests of the girl that you want the man to suffer?

A. Yes.

Q. Will not the girl suffer also if the man suffers. If there is a possibility of their coming to good terms will that not be a better course?

A. The girl will then produce weak children which is not in the interests of society.

Q. Supposing methods are devised by which we can separate the girl and the boy, for instance by taking bonds from the parents or guardians instead of sending the man to prison, will that not be enough?

A. Yes; if you can take bonds it will be useful.

Q. Do you not think that the offence can be made compoundable?

A. Taking bonds is itself compounding, if you apply section 562. It will then be left to the discretion of the court to say whether the offence can be compounded or not.

Mrs. O'Brien Beadon: The 5 cases which you mentioned about early motherhood, were they of recent occurrence?

A. They happened within the last 3 years.

Q. Were all the girls married about 12?

A. Yes.

**Written Statement, dated the 13th August 1928, of Rai Sahib MITHAN LALL BHARGAVA, Advocate, President, Arya Samaj, and Member of the Executive Committee, Hindu Sabha, Ajmer.**

1. In this district there is no dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376.

2. Looking to the physical and educational condition of the girl and their weak intellect it is necessary to make an advance on the present law. The Bhargava Conference has already made a move towards increase of marriageable age to 15 years in case of girls and 21 in case of boys.

3. The crimes of rape are not frequent in this district, but the crimes of seduction are too numerous. The raising of Age of Consent to 14 years in 1925 has not succeeded in this district. In my opinion to prevent seduction Age of Consent should be raised and steps be taken to provide facilities for the private volunteers to discover and have access to the female seduced and better and honest persons should be engaged in Police Department who may be free from communal bias.

4. Yes, the amendment of 1925, has been effective in all the three modes referred to in question No. 4

5. The usual age of attaining puberty in case of girls is between 13 and 14 years. With very few exceptions it is the same in all castes and societies.

6. No, not under any of the three circumstances mentioned in question No. 6.

There has been no court case in this district of this nature since 1893.

7. No, there is no religious injunction sanctioning cohabitation at an early age while on the other hand there are religious injunctions that there should be no cohabitation before 16 in the case of girl and before 24 in case of males.

8. Gaona ceremony is performed usually but no garbhadan ceremony is performed. It is generally performed after attainment of puberty and mostly between the age of 14 and 15.

9. I do not consider that the attainment of puberty, is a sufficient indication of physical maturity to justify consummation of marriage. A

girl's physical development should be considered enough to justify consummation full three years after she attains puberty or monthly courses begin and in no case before she completes her sixteenth year.

10. Not before fifteen years of age under any circumstance.

11. Yes. In cases girls become pregnant at the ages of 14 or 15, they experienced serious troubles at the time of delivery, some of them died, others were broken down in health and the infants born were of very small size and weak constitution and very few survived.

12. Yes.

13. Yes, there has been some development of public opinion in favour of an extension of Age of Consent, but it is not general but is confined to educated people only.

14. Yes, the women of uneducated classes do favour early consummation and even females of educated classes cannot be said to be free from this desire, in case gaona ceremony has been performed.

15. As there have not been many cases, I am not in a position to reply question No. 15 satisfactorily.

16. I cannot say.

17. Yes, extra-marital and marital offences should be separated into different offences. In case of marital offence even punishment of six months' rigorous or simple imprisonment would be sufficiently deterrent, provided the marriage was honest and faithful and not by an abduction or kidnapping.

18. Yes, there must be difference of procedure. The procedure suggested in Section 376A would meet the requirement.

19. No.

20. Yes, both the laws should be passed.

21. I prefer to rely on the strengthening of the penal law to secure the object in view.

**Oral Evidence of Rai Sahib Pundit MITHANLAL BHARGAYA, Advocate, President, Arya Samaj, and member of the Executive Committee, Hindu Sabha, Ajmer.**

*(Delhi, 9th October 1928.)*

*Chairman:* I understand you have been at the bar?

A. Yes.

Q. For how many years?

A. 35 years since April 1893.

Q. You are also a member of the executive committee of the Hindu Sabha, Ajmer?

A. Yes, and I am President of the Arya Samaj.

Q. May we take it that this opinion that you have given is on behalf of those two bodies or is it your own personal opinion?

A. I sent this opinion as president of the Arya Samaj, but the executive committee of the Hindu Sabha also agrees with me.

Q. The executive committee of the Hindu Sabha—consists of how many members?

A. 51.

Q. I suppose there is a much larger membership of the general Hindu Sabha?

A. It consists of 500 members.

**Q.** In reply to question 2 you have referred to Bhargava conference. Will you kindly tell us when and where it occurred and what is exactly meant by Bhargava conference?

**A.** The Bhargava conference is in existence since 1899. I belong to that community and I am vice-president of the executive committee of the Bhargava Sabha which is a registered sabha and the head office is at Agra. Even in 1902 and 1903 we raised the age of marriage of girls to 11, then it was raised to 12 and now last year we raised it to 15.

**Q.** When did you raise it to 15?

**A.** About 1908.

**Q.** So that according to caste ordinance no girl ought to be married below the age of 15?

**A.** No.

**Q.** Do you penalise those who break your rules?

**A.** We simply condemn them.

**Q.** Is that the reason why you accept 14 and 18 as stated in Sarda's Bill?

**A.** Not only this but also according to the circumstances that I see in my own community as well as in Ajmer Marwara District. I am also a follower of the principles of Arya Samaj.

**Q.** In answer to question No. 20 you want a law penalising marriages as well as the Age of Consent?

**A.** We want both.

**Q.** But you want this age of 14 in both cases?

**A.** This is because I see that Mr. Sarda's Bill proposes 14 otherwise I personally would like it to be raised to 16. In non-marital cases the age should be raised to 18.

**Q.** Why do you make a difference between marital and non-marital age?

**A.** A husband has some control over the wife and he can think of the safety or injury to the wife while those who are stranger do not mind anything. These Indian women and girls are very simple and can be seduced.

**Q.** Would you also raise the age of abduction under Section 366, Indian Penal Code?

**A.** Yes, that should be raised to 18. It is very necessary.

**Mrs. Beadon:** You said that you have raised the age to 15. Do you boycott those who do not observe it?

**A.** We condemn them and those who are staunch followers of this conference do not join in their marriages.

**Q.** You say in answer to question No. 11 "in cases of girls who become pregnant at the age of 14 and 15, they experience serious trouble". Can you give us any definite cases that have come to your notice?

**A.** Yes. I know of two or three instances in which the girls were married below 14 and there was no restriction and they became pregnant and at the time of delivery they suffered a great deal of trouble.

**Q.** By a great deal of trouble do you mean the girls were ill afterwards? Did they suffer during delivery or after delivery?

**A.** They suffered both during delivery and after it and I have seen that the children of such mothers are small in size and weak and they die within five or six months.

**Q.** When did those cases occur; within the last few years?

**A.** Within the last four or five years.

**Q.** Have you found any cases in which girls developed consumption?

**A.** Yes, I have seen many cases. Girls were usually married at the age of 12 and in the 13th, 14th or 15th year they became pregnant and they were so weak that they fell a prey to consumption.

Q. Are the parents of these girls in fairly good circumstances?

A. They were not poor.

Q. Do you consider from your experience that girls who marry young are more subject to fall a prey to tuberculosis than those who marry late?

A. There is a great deal of tuberculosis but I cannot say definitely whether it is due to early consummation.

Q. How long after this girl developed tuberculosis?

A. About 2 years.

Mrs. Nehru: You have said in para. 3 of your statement that seduction cases are very numerous. Can you tell us in what class of people they are numerous?

A. In lower classes.

Q. Generally what caste?

A. We have Mair and Mairath. They are from the Rajputs of Ajmer and they are especially found in Ajmer Merwara.

Q. What is generally the age of girls who are seduced?

A. They are generally seduced between 13 and 20.

Q. Older women are not seduced generally?

A. There are very few cases.

Q. Have you personal experience of any such cases?

A. Yes, I have seen them in court.

Q. And those which have never gone to court?

A. I have heard of them, but I have not seen exactly. Whenever these cases come to court sometimes in my practice and sometimes from others I had the opportunity of seeing them.

Q. Do they seduce these girls with the object of marrying them or just to lead them astray?

A. Sometimes they sell them and sometimes they marry them.

Q. Do they sell them in the Ajmer District?

A. Mostly they take girls to Sind and sometimes to Punjab. As orthodox people are not likely to accept them they practise fraud by other means that is to say remove some girl of lower caste and say that this is Mahajan caste or she is Brahman caste. In this way they deceive people and get money.

Q. But generally they do not dispose of them in your province?

A. No.

Q. Why don't they dispose of them in your province?

A. Because when they do such a thing in our own province they are punished. Our province is surrounded by Native States and it is very easy for them to remove these girls to these States.

Q. In para. 4 you say that the amendment has had effect in all three directions—as far as extra-marital connections go but when you deal with intra-marital cases you say it has had no effect. Can you tell me why and how one part of the amendment has had effect and the other part has not?

A. In the case of extra-marital cases police is concerned and people take care.

Q. But even in intra-marital cases the police is connected before 12?

A. Yes, so far as marriage is concerned people have some regard for their own welfare, but there are also instances in which people had no regard, but of this law and when this is the law people—and especially the upper class people—are afraid of it.

Q. Then you say in your statement that cases of this kind do not come to court. Have you known of many cases in which consummation has taken place before the age of 13 years?

A. To my knowledge no case has come to court but there were cases though they were not so numerous.

Q. Can you tell me what is the reason of their not coming to court?

A. Who was to complain?

Q. Whom do you think we should give the power of complaint?

A. In reality so far as the wife or her parents are concerned they will not complain. If this power is given to such persons as may take interest in social matters or to the panchayats of the castes it will be more effective.

Q. Do you think in all localities sufficient number of trustworthy people can be found who can be entrusted with this work?

A. Yes, people can be found who are sincere and honest.

Q. What do you think of the punishment provided? Do you think it is very high?

A. I think this punishment is not severe.

Q. Do you know what it is at present?

A. I think it is 2 or 3 years.

Q. It is 10 years below 12 and between 12 and 13 it is 2 years. Do you think it is not severe?

A. So far as marital relations are concerned it is sufficient and I do not think it may be allowed to be raised. If it is reduced to one year it would be sufficient.

Q. Why do you think reduction will be better?

A. Any person who cohabits with his wife is not actuated by undesirable desires, but he thinks that he is entitled to it and therefore he does it. When it will be known that he will be sent to jail, it will have a deterrent effect.

Q. Would you make no distinction between the ages so far as husbands are concerned?

A. No, because marriageable age is to be increased it is not necessary.

Mr. Yakub: How do you know that Sarda Bill will be passed?

A. I see there is a Bill before the Legislative Assembly.

Q. But all Bills that come before the Assembly are not passed.

Mr. Mitra: You are for creating two separate offences for marital and extra-marital cases?

A. Yes.

Q. May I take it that you fix the age for extra-marital cases at 18 and you consider that as the minimum?

A. I consider all the circumstances because the present age is only 13 and therefore I think 18 would do.

Q. You are not afraid that if it is fixed at 20 there will be any objection from any community?

A. In extra-marital cases it should not be.

Q. You said that there is a paucity of cases as regards intra-marital relations. Would you kindly give us the reasons why you think so? Is it because there is no proper procedure for trials or there is anything by adopting which we will get more cases?

A. My first reason is that people do not like to come to court in such family matters. They are afraid of the police if a report is made to the police.

Q. There has been a suggestion before us that because there is deterrent sentence even in intra-marital cases people do not come to court and some people have suggested that in such cases, except in the case of violent injury, the punishment may be confined to fine only. Do you approve of it?



A. That is possible because among the Hindus/especially marriage is regarded as a sacred thing and they say that after all the wife will have to remain with the husband. Therefore neither the wife nor her relations would like that the husband be punished. I therefore quite agree and I am prepared to approve of this suggestion which has been put forward. Fine should not be Rs. 5 or Rs. 10, but it should be sufficiently deterrent.

Q. In answer to para. 7 you say that religion enjoins that there should be no cohabitation before 16. We shall be obliged if you will kindly refer us to some Shastric opinion?

A. I am told that it is prohibited by Vedas and I have seen it in Satiarath Prakash. It says that a girl should not be married before 16 and the boy should not be married before 24. When there is restriction about marriage certainly there is restriction about cohabitation.

Q. Do you think there are verses in the Vedas supporting this view?

A. Yes, I have heard that there are verses in the Vedas and I have seen it in the Satiarath Prakash.

Q. Do you suggest any special procedure for trial of intra-marital cases—whether it should be in camera or previous sanction of the magistrate should be obtained or it should be a trial by a court of sessions or jurors?

A. I would suggest that it should be tried by the highest court presided over by an Indian judge generally and Hindu in the case of Hindus and Mohamedan in the case of Mohamedans because these people know the spirit and if they are to be tried by jury or tried by district judge that would be better.

Q. As regards ascertainment of age there have been two suggestions one is the registration of births and another is the registration of marriages. Don't you think there will be resentment on the part of the Hindu public if we force them to register all their marriages?

A. Certainly there would be.

Q. So far as the registration of births is concerned you think that would serve the main purpose?

A. Yes. Arrangements may be made to have the births registered in all the villages. In the municipal towns we can get correct data, but if some officer is appointed we can have a good register of births and deaths in villages also.

Mr. Yakub: You say there is no dissatisfaction with regard to age. Why did your conference raise the age of marriage if there is no dissatisfaction?

A. In the first place our community is not confined to Ajmer Marwara; it is spread over Punjab, Rajputana and U. P. and moreover it was on account of physical degeneration and growth and the fact that children die sooner that we raised the age.

Q. Would you say that in your part of the country also the educated people of your community thought it necessary that the age of marriage should be raised?

A. Certainly. It was not only in Ajmer Marwara, but our resolutions were passed in Jaipur.

Q. What about other communities residing in Ajmer Marwara? Do they also consider that the age of marriage should be raised?

A. The educated people have begun to consider it and they certainly do not mind. There are certain people who are illiterate and cannot understand the welfare of their boys and girls; it is these people who do not consider it necessary and now even these people have increased their ages. Formerly they used to marry their daughters at the age of 6 or 7.

Q. Why have they increased the age if they do not realise the harm?

A. By following the educated and higher class people.

**Q.** Can you suggest any means of social reform for educating the uneducated people?

**A.** If preachers are sent and these societies as the Hindu Sabha, Arya Samaj, Muslim League are given facilities there can be social propaganda and people can be taught.

**Q.** When your conference has raised the age of marriage to 15 would you like to have a law penalising persons who perform marriages before 15?

**A.** Yes, personally I would.

**Q.** What would be the opinion of your Sabha of which you are the president in this matter?

**A.** They will support it and if the law is passed members will exert their best to educate the community.

**Q.** You know that a husband is more responsible for the welfare of his wife than a stranger and in the case of a husband there are more opportunities of raping the girl than in the case of a stranger. Why then do you want lighter punishment in the case of a husband?

**A.** People can go and tell directly to the husband that this is not a good thing. He is a responsible person and is known to the people; they can approach him and he can be corrected while in the case of a stranger people cannot approach him and for him the only deterrent thing is the court.

**Q.** What is the use of giving him warning when injury has been done? A husband is a responsible person and as such is liable to more punishment than an irresponsible man. He knows perfectly well that there will be injury in committing such an offence and therefore punishment should be deterrent in his case?

**A.** It is not only the punishment that will deter him, but the welfare of the family will deter him more.

**Q.** Knowing that he is responsible for the welfare of his wife he commits offence upon her then more punishment should be given to him? Is it not?

**A.** I think it is found only in rare cases.

**Q.** But when such cases occur why deterrent punishment should not be given?

**A.** We have got to keep the relations between husbands and wives because after suffering imprisonment he will have to live with the wife.

**Q.** Supposing the wife is incapacitated what is the use of her living with her husband?

**A.** She cannot go anywhere else and has to depend on him for her maintenance. These are circumstances which made me think that lesser punishment would be sufficient.

**Mr. Bhargava:** The Bhargava community has passed the age of 15 years, but there are now cases in which marriages are celebrated when the age of the girl is below 15 and that of the boy less than 21, so that this social legislation is not so effective unless there is some sort of force behind it?

**A.** Yes. We only condemn the defaulters. It is for this reason that our community thinks that physically and morally ages should be raised to 15 and 21 but yet we have not got any power in our hands to support our resolution.

**Q.** Do you think if there is no penal legislation, the reform is likely to be brought about very soon?

**A.** It will be very slow and will take a long time.

**Q.** Do you think that as far as social propaganda is concerned it is the duty of the Government to undertake it by various means?

**A.** After seeing it for the last 40 years I think there should be Government hand and support.

Q. Do you think that the health officer of a district board be charged with a duty in respect of social propaganda just as he is now responsible for plague, cholera, etc. He may have magic lanterns to educate the people?

A. It will be a good thing, but my experience is that they do not discharge their duties properly.

Mrs. Nehru: The duty of making a public servant discharge his duties properly lies on the public also. It is for the public to make the servant act according to their wishes?

A. The public is not literate enough and at the same time he is a municipal servant and not a Government official and does not care to discharge his duties satisfactorily.

Mr. Bhargava: In executive matters Tahsildars, Lumbardars or Patwaris are granted sanads for doing good work; do you think that a system like that would also work so far as this aspect of the matter is concerned?

A. That would be one way of encouragement.

Q. You just now said that you are in favour of the punishment being one year in respect of husband whether the girl is below 12 or above 12. The present punishment which is 10 years and transportation for life has been in existence for the last 30 years. Have you come across any cases of great hardship?

A. My reply shows that so far as marital cohabitation is concerned I did not come across any cases in the district.

Q. Do you think that there is a delicate relationship between the husband and wife and therefore it should be so?

A. That is my reason.

Q. You have just stated that you are in favour of the age being raised to 16 because under this age the girl and the progeny of the girl suffer. Don't you think that if the husbands are treated very leniently then this evil which you think so much of will be perpetrated?

A. I do not think it will be perpetrated because over and above marriage legislation there will be fear of punishment and fear of being put to harassment.

Q. With the prospect of fine only?

A. Heavy fine; we may say not less than Rs. 500.

Q. May I understand that you are in favour of placing a limit of fine say Rs. 500 on the statute book?

A. Yes.

Q. Will that fine not act as a very great hardship on poor peasants?

A. There will be fine or imprisonment.

Q. Six months' rigorous imprisonment?

A. Yes, I think it will be better.

Q. Would you give discretion to the court to punish in suitable cases with both fine and imprisonment? For instance if a man of 35 behaves in a brutal manner towards a girl of 12?

A. I say fine or imprisonment; that would give discretion to the court whether fine alone would be sufficient or there should be imprisonment.

Q. So I understand that if the girl is very immature, you would prefer imprisonment to be given in the case of a grown up man, but if the offender is a boy of immature years then you would like fine only?

A. When I gave this opinion I had in my mind cases of girls of more than 13 years. Therefore I have based my replies on that.

Q. So far as cases of unequal marriages are concerned, are you in favour of some legislation restricting these? For instance there may be a provision like this that a man of over 40 may not be married to a girl of below 16?

A. Personally, I think there should be legislation to that effect; it is quite necessary.

Q. May I know why you think that age limit in extra-marital cases should be raised even to 20?

A. My view is that the females are not a party to the act. They are not addicted to vice, they are led to vice by males and therefore if they are of tender years when they have not got any sense to know what is good and right they are easily led away. Therefore the more major they are the better it is in their case.

Q. Do you realise that the Hindu law and the Mohamedan law fixes 15 or 16 as the age of majority and the present law of majority is 18 years and nobody has ever objected to that age? Do you not think you will be unnecessarily interfering with the liberty of girls if you fix it at 20?

A. Certainly not. It is to prevent immorality.

Q. Supposing there is an unmarried girl and she consents to a connection with a man before marriage?

A. Why should she.

Q. It is her own idea of liberty?

A. We have got Hindu law, Mohamedan law and Christian law in all of which any connection without marriage is punished.

Q. Is there not a great danger to the boys also? If a girl and a boy consent to a connection, the boy will be punished. The question is while fixing the age of 20, have you considered the case of boys who may fall a prey to the charms of girls?

A. That is very seldom.

Q. When you make a law you would make it for all cases. Will you not provide for cases of hardship?

A. In my opinion it will not be a hardship. If you take the case of prostitutes you can make another sort of legislation. Penal legislation of this nature will be general.

Q. Will it cover the case of prostitutes?

A. Yes, it should cover.

Q. In their case also the age should be 20?

A. Yes.

Q. Do you know of any country which has fixed such a high age?

A. I do not think law is necessary in any country. They are so advanced that they take care of themselves.

Q. Then you say that you would like that in these cases the judges should be of the same community as the accused. Do you think it is practical proposition in India?

A. It is possible.

Q. Is it your idea that highest Indian judge should try?

A. I will be content with a first class magistrate.

Q. Do you think that in marital cases a Hindu Judge will not be good for Mohamedans or a Mohamedan Judge for Hindus?

A. Because their customs and manners are different.

Q. There is no question of customs or manners; the law is the only thing to be considered and not custom?

A. I think it will be better.

Mr. Bhargava: You were saying that you would like that birth registration may be made more accurate. What is the system in Ajmere in rural areas?

A. In rural areas the Patwari maintains the register. But it is not very satisfactorily done.

Q. I want to know if there is any obligation put by law on the parents of children to report a birth.

A. There is none. So, I say it must be improved.

Q. Is that a part of the duties of the Patwari to keep the register?

A. They keep a sort of Roznamcha in which certain entries are made.

Q. In Punjab the Chowkidar keeps the register and makes the entries. After a week or so he takes the register to the Thana and from there they are sent to the Civil Surgeon. Would you like that to be extended to your province?

A. Yes.

Q. Would it work satisfactorily?

A. Yes.

Q. Are you in favour of imposing some sort of obligation on the parents to register births?

A. Not in rural areas. They are very backward. It should be enjoined on the patwaries and chowkidars to see that every birth is reported.

Q. In marital cases I understand, that you are feeling like this. If the husband is punished and as the wife has to live with the husband subsequently, the chances are that they will not live amicably.

A. Yes.

Q. Would you like that some sort of provision be made to secure the segregation of the husband from the wife for sometime?

A. Under the present system of education and the atmosphere that is now prevailing it is rather impossible. Some forty or fifty years ago it was observed. Even after the Goana ceremony parents used to take care that their children did not go to their wives for sometime.

Q. What would you propose to-day to effect the separation between husband and wife for a year or two, if Sarda's bill is not passed?

A. I think it is necessary that the parents should take care of their boys. They should not allow them to meet their wives during nights till the couple is fully grown.

Mr. Mudaliyar: With reference to extra-marital cases, a case was put to you of a girl of about 20 having cohabited with a boy of 17 or 18, where the girl was really the party seducing the boy and you told that it will be a great hardship to the boy if he were to be penalised for that. In such a case would you not leave to the magistrate the discretion of giving the punishment?

A. A clause in the form of an exception may be added.

Q. Do you think in a case in which the boy is really the injured party and the girl has been the aggressor, the judge would award any deterrent punishment or any severe punishment? Do you think it is at all likely?

A. In such exceptional cases it may be left to the discretion of the court, and that is what I meant by saying that a particular clause be added.

Mr. Kanhaiya Lal: You have said you would personally like that the Age of Consent should be fixed at 16. Would that be acceptable generally to the Bhargava community?

A. Yes, it would be.

Q. Would that be acceptable to the Hindu community?

A. To the educated portion of the Hindu community it would be acceptable.

Q. Do you think that the orthodox portion, the rural classes and the illiterate portion would object to it?

A. Of course it is likely that they may object, but there will be no great opposition to the age being fixed at 16.

**Q.** Would you like that the parents should be penalised for abetting the crime or in other words for allowing the girl and the husband to cohabit before the prescribed age?

**A.** How is that possible? The difficulty is that this Goana ceremony is only a social ceremony while marriage is a religious ceremony. As soon as the marriage is performed the husband gets the right and can approach his wife; although for the sake of etiquette people do not send their daughters even now at least for a year or so yet there is no prohibition.

**Q.** Would you recommend that the law relating to the guardianship be amended so as to allow the parents of the girl to have custody of the girl till she has attained the prescribed age?

**A.** I would certainly be in favour of that. If the law is so amended I would like that the parents of the girl who allow her to go to her husband or the boy husband should be punished as abettors.

**Q.** You would exempt the husband unless he is above 18?

**A.** If all these circumstances are there then of course up to the age of 18 I would exempt the boy.

**Q.** You will like to have that legislation in order to help legislation fixing the age of marriage?

**A.** Yes.

**Q.** The people are required to report births and deaths. Would there be any greater hardship if they are required to report marriages?

**A.** If you take into consideration that thing, I don't think it would be a hardship.

**Q.** I hope you realise that if we have a system of registration of marriages we shall be able to get some assistance from these registers in regard to questions of age, etc.

**A.** Yes, in cases of maintenance, divorce and other cases under Section 498 that would be of great help.

**Q.** To whom would you give the authority to maintain these registers?

**A.** I think if revenue authorities are invested with those powers that would be better. The Tehsildars and the Niah Tehsildars would be better than the police.

**Q.** Would you place the obligation to report on the parents or on the priest?

**A.** On the parents and not the priest.

**Q.** It has been suggested that we might have a matrimonial court for the trial of these marital cases. Would you also suggest a similar thing?

**A.** There are various considerations. The number of cases that will arise will not be many and in that case there will be unnecessary expenditure incurred. There will be the difficulty about constitution.

**Q.** We may have, it is suggested, two non-officials and call that a matrimonial court. Or, we might have one district magistrate and two non-officials to sit together for the trial of these cases. Among the Parsis they are all non-officials. We might have a mixed tribunal or a non-official tribunal to consider these marital cases which will be done with least publicity.

**A.** There will be no objection if proper persons are selected and there is no corruption. It may consist of three men, one paid and two honorary workers.

## Written Statements of persons not orally examined.

**Copy of letter, dated the 15th August 1928, of Mrs. SUSAN CAMP BELL, L.R.C.P.S., Women's Mission Hospital, Ajmer.**

Not having kept statistics on these subjects I have no data to give details of Hospital cases. But my experience is that Hindu and Mahomedan girls usually marry about the age of 14 or 15. If married younger they generally return to their mother till they are 14 or 15 years old.

I have seen cases of child wives being injured by the husbands but not many. Too frequent child-bearing is a more common evil.

Girls generally mature about the age of 13, but their capability of giving consent does not go with maturity. Child marriages seem to be declining, due I think to the spread of education and increasing contact with western ideas.

I think marriage under 16 for a girl and 18 for a boy should be penalised.

**Written Statement, dated the 15th September 1928, of YUMUNA DEVI, Shastri, Singhji-ka-Rasta, Jaipur (Rajputana).**

1. Yes, there is dissatisfaction with the state of law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code, in certain quarters but not in general.

2. Under the present circumstances the Age of Consent, which is prescribed 14 years according to the amendment of 1925, is worth retaining as:—

- (a) Owing to the climatic condition the girls attain puberty earlier than in other countries.
- (b) Mode of living, i.e., the majority of masses being poor the parents cannot afford to keep the girls unmarried for long.
- (c) Poverty disables parents to guard their children against extraneous influences of an undesirable type.
- (d) Religious injunction binds parents to marry their girls as soon or before attaining puberty which generally comes on about 14.

3. Yes, the crimes of seduction or rape are frequent. It cannot be said how far the amendment of law made in 1925 raising the Age of Consent to 14 years succeeded in proving the same effective. Compulsory education and social reforms would alone do good towards making this effective.

4. Among certain communities people begun to realise the necessity of putting off the marriages of their girls beyond 13 but it does not seem to be the result of the amendment of 1925. It seems to be the part of the general awakening.

Education of the masses may enable them to understand the importance of the cause.

5. The usual age at which the girls attain puberty is between 12 and 14. Yes, it differs in different castes, communities and classes of society according to the mode of living and purdah system.

6. No. It is not common before the girls complete 13 years. Soon after puberty it may be taken as being common. It is seldom that these cases come to court.

7. Yes, mostly to religious injunction the practice of early marriage before or at puberty is attributed. The below Shlokas\* of Dharm Shastras can be the prevalent authority:—

8. Yes, the gaona and garbhadan ceremony are performed. The latter rare, gaona is performed long after the marriage generally after 1 to 3 years where marriage is consummated before the girls attain puberty. But where the girl is of age the gaona ceremony might be made to coincide with the marriage.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

10. This depends on the training of the girls which is so very varied in different communities that it is simply difficult to fix one period of age for all. Possibly the age of 15 may be taken as an average.

11. Cases have sometimes been seen in which cohabitation before puberty resulted in phthisis to girls and spoiled progeny but such is only experienced where the age of the girls differed much with that of the match.

12. Yes, early marriage and early maternity must necessarily tell upon the health of the mother and the infant and possibly result in high maternal and infantile mortality.

I am of course a believer in the fact that a child born of a mother who is not fully developed physically and mentally must be deficient physically and mentally and as such affect the intellectual and physical progress of the community.

13. Signs of development of public opinion in favour of the extension of the Age of Consent are noticeable in the educated class of people of all communities but I won't call it general.

14. Yes, they do due to religious influence. Women are generally more religious than men.

15. Yes, there cannot be two different opinions on the difficulties that are daily experienced in the law courts even by the medical men whose expert opinion is often relied upon in cases under sections 375 and 376. The sure and positive measure to remove or minimise these difficulties is the registration of births and examination of horoscopes because uptil now no other test has been discovered, which can be exact to years; as at present the medical opinions often leave a range of three years at least.

16. The age between 11 and 16 of girls is so doubtful that the question in its present form cannot be properly answered *vide*, answer to query 15 above.

17. Yes, in the case of marital cases if the rape is between 11 and 13 the punishment should not be less than 2 years. In case of non-marital cases the punishment which is already prescribed if made exemplary as said by Manu holds fit.

18. Yes, all should be warrant, cognisable and bailable offences.

19. Encouragement of public opinion for both.

20. Minimum age of marriage is the only effective measure than fixing the Age of Consent.

21. In my opinion social reform by means of social propaganda aided by strengthening the penal law may possibly secure the object.

**Written Statement, dated the 11th August 1928, of Mr. E. G. GIBSON, I.C.S., District and Sessions Judge and District Magistrate, Ajmer-Merwara.**

1. I am not aware of any.

\* Submitted to the Chairman.



2. I consider that the Age of Consent should be advanced to 16. A girl can hardly be said to have reached an age of discretion before then, and I believe that medical opinion agrees that sexual intercourse is undesirable for a girl under 16.

3. Not many cases come before the Courts but as such cases are frequently bushed up this is not a reliable criterion of the number that occur. However, as far as I know cases are not very frequent in Ajmer-Merwara. I give below a statement supplied by the Superintendent, Central Jail, showing the number of convictions for cases of seduction and rape for the years 1923 to 1927:—

Sections.	Nature of offence.	1923.	1924.	1925.	1926.	1927.
		M. F.	M. F.	M. F.	M. F.	M. F.
363 to 373 I. P. C.	Kidnapping, abduction, selling minor to slavery.	5 2	11 0	5 0	3 2	12 0
376 I. P. C.	Rape (no case in which husband committed rape with his wife).	1 0	2 0	2 0	1 0	2 0

Apart from the indication afforded by these figures I cannot say what effect the 1925 amendment has had.

4. (1 & 3) It may be presumed—though it is difficult to say definitely—that the amendment of 1925 has had some effect in the way of postponing the consummation of marriages, though probably it has had little effect in the way of postponing marriages.

(2) It has stimulated public interest in the subject. Though orthodox opinion is opposed to any raising of the age, enlightened Hindu opinion is favourable to it.

I do not think that legislation can ever be fully effective until public opinion is enlightened by propaganda and education.

5. Girls usually attain puberty in this part of the country at the age of 13 or 14. As far as I am aware the age does not differ among different castes, communities or classes of Society.

6. (1) No.

(2) Yes.

(3) Not unless the girl attain puberty before that age.

Such cases rarely if ever come to Court.

7. So far as Mahomedans are concerned there is no religious injunction.

So far as Hindus are concerned I am told that those who regard early consummation of marriage as desirable assert that religious authority for the practice is to be found in the laws of Manu. I do not know if this is so or, if so, what the nature of the injunction is.

8. I believe so and understand that the ceremony is usually performed after the attainment of puberty and anterior to the consummation of marriage.

9. I am hardly competent to answer this question. The Civil Surgeon informs me that he considers that intercourse before 15 should not be allowed for the sake of the girl herself and her children and having regard to her capacity for looking after her children.

10. It depends on the girl. Perhaps all round 16 might be taken as the age.

11. No. Such cases do not come within my experience. The Civil Surgeon informs me that 6 or 7 such cases have been treated in the Civil Hospital in Ajmer in seven years.

12. It can hardly be otherwise.

13. There is a tendency among the more enlightened members of the community to marry their daughters at a later age. The bill introduced by Rai Sahib Harbilas Sarda, who is M.L.A. for Ajmer-Merwara, has served to focus the attention of persons who can think for themselves on the subject.

14. Yes.

15. The Civil Surgeon informs me that it is very difficult. X-rays are now used for the purpose.

16. I believe it would.

17. No.

18. No.

19. Additional penalties for collusion should have a useful deterrent effect, but I have no definite suggestions to make.

20. Probably legislation fixing the minimum age of marriage would be more effective, as detection of offences against such a law would be easier. In a majority of cases offences of intercourse by a husband with his wife before she reaches the Age of Consent can never come to light.

Public opinion in the district would, I think, be more opposed to the latter alternative (fixing the minimum age of marriage) than to the former.

21. Both legislation and enlightenment of public opinion are necessary. The former can, however, never be fully effective without the latter. Education (especially the education of women) and propaganda will inevitably be more fruitful of permanent results and more potent and surer instruments of social reform in this matter than penal prohibitions. People are more likely to give up undesirable practices when they realise that they are undesirable than because they are forbidden by law.

**Written Statement, dated the 15th August 1928, of Lieut.-Colonel J. W. WATSON, C.I.E., I.M.S., Civil Surgeon, Ajmer-Merwara, Ajmer.**

1. Nos. 1, 17, 18 and 19 you can answer from you knowledge of Law.

2. There is no doubt that it is better for a woman and her offspring that she should not start married life too soon.

3. Five years statement is given of crimes of seduction or rape.

Sections.	Nature of offence.	1923.	1924.	1925.	1926.	1927.
		M. F.	M. F.	M. F.	M. F.	M. F.
363 to 373 I. P. C.	Kidnapping, abduction, selling minor to slavery.	5 2	11 0	5 0	3 2	12 2
376 I. P. C.	Rape (no case in which husband committed rape with his wife).	1 0	2 0	2 0	1 0	2 0

4. (1) I cannot say.

(2) Yes, public opinion amongst the more enlightened Hindus is favourable for a later date.

(3) As above but orthodox opinion is against any raising of the age.

5. 13 or 14 is the age at which girls usually attain puberty in this part of the country, I know of no difference in different castes, communities or classes of society.

6. (1) No.
- (2) Yes.
- (3) Depends on puberty.
7. Yes. The authority is said to be the law of Mann but it is doubtful.
8. Yes, it is anterior to the consummation in most cases: the latter depends on puberty and is generally at 14, 15 years of age.
9. No. I would not allow any intercourse before 15 for the sake of the girl herself and her children and her capacity of looking after these children.
10. Impossible to reply to this. Every one is different, 15 or 16 seems to me a suitable age.
11. Occasionally. The Civil Hospital treated about 6 or 7 cases in 7 years.
12. I do.
13. Among the more intelligent there is a tendency to marry their daughters later and I know of some Hindu gentlemen who say they will not allow their daughters to start married life till 15 or 16.
14. Yes.
15. It is always most difficult. X-rays are now used.
16. The older the better. 16 would be best age.
- 17—19. Legal.
20. Both are necessary.
21. The progress of social reform is the more hopeful. In this case education of women is most essential. The law will always be evaded if unaccompanied by a strong propaganda.

**Written Statement, dated the 26th August 1928, of Mr. K. MULL, Jaipur.**

1. As regards the question whether the Law of the Age of Consent be retained as it is, or given an advance I would say the Committee to make an advance on the present law.
2. The Age of Consent must be kept sixteen instead of (Fourteen) as it is generally seen that the full physical development of a girl's body takes place after she completes 15 years and that the girl is willing to give consent freely to her husband to cohabit with her as soon as she completes sixteen years.
3. It will produce a good effect upon the public (if the Age of Consent is raised from 14 to 16) from the medical point of view as well as from that of religious.
4. Moreover I say that only the raising of the Age of Consent from 14 to 16 will not be effective in protecting married girls and boys against cohabitation unless marriages before sixteen are strictly forbidden. Nor the amendment of 1925 raising the Age of Consent to 14 years has been effective in preventing married girls and boys against cohabitation within the prescribed age limit. In Rajputana it often happens so that a girl aged 14 gives birth to a child.
5. At the same time I would draw the attention of the Government to take strict steps for the education of both sexes male and female.
6. In Rajputana all women are illiterate. Among women there will be scarcely one in a thousand who is literate, 20 per cent. men are literate. (It is a general thing.) But I would say that the education in Rajputana differs in different castes and communities.
7. I have seen that among men 60 per cent. people in Rajputana whether literate or illiterate are of the same opinion as I have submitted here. Only men and women who are very backward being illiterate and are known under so-called conservatives are against this opinion.

8. I hope that I shall be cured soon, before the Committee starts on the tour. And I would be willing to give oral evidence if required by the Committee.

9. I shall be very glad if you will kindly let me know further news and informations in this matter.

**Written Statement, dated the 9th August 1928, of Sahibzada ABDUL WAHID KHAN, Additional District and Sessions Judge, Ajmer-Merwara, Ajmer.**

1. Not that I am aware of.

2. I think the age should be advanced to 16 for, in my opinion, a girl is too immature to give an intelligent consent at 14.

3. (a) No. At least very few cases come before the courts. But they are not always a true index of actual crime. For there is always a tendency to hide such occurrences.

(b) I cannot say.

4. It is difficult to say how much of such cohabitation is actually prevalent and whether the 1925 amendment had any effect. But a penal enactment even though it is not utilised, acts as a check and the amendment must have produced some effect though it is not possible to be positive.

5. (a) I believe the average would work out at 13.

(b) Perhaps not.

6. No. As far as I can say it is not common before puberty nor before 13. Probably cohabitation soon after 13 which is the usual age of puberty and consequently of marriage is not uncommon. I have not known of any such case during the last 10 years that I have been Sessions Judge.

7. I can speak of Mahomedans only and I can say that with them there is no religious injunction.

8. Not able to answer.

9. (a) No.

(b) I think 16 is the proper age.

10. Perhaps sixteen.

11. I am not able to reply this question, as I am not a medical man.

12. It is difficult for me not a medical man to answer the first part of the question with regard to mortality. As to the second I can say that early marriage and consummation do divert attention of the couple from intellectual or other pursuits, which is detrimental to national progress.

13. This province is isolated from the rest of British India. I am not aware of any such development of public opinion.

14. Early marriage and consummation are desired in order that the young people may be safe from temptations and also there is at the back of it a desire on the part of parents, to find playthings for themselves in the shape of grandchildren.

15. I have not known of such cases.

16. A medical man can answer this more properly.

17. (a) I would certainly do so. For cohabitation of a man with his own wife however young, does not stand on the same footing as with a stranger.

(b) Same as now.

18. For marital offences I would suggest trials "in camera". Such offences should be enquired into, if possible, by women police and senior police officers of the rank of Assistant or Deputy Superintendent of Police.

And the trial should be by a fairly senior Officer like a Sessions Judge, and if possible with the aid of men and women assessors half and half.

19. It is very difficult to suggest safeguards except public opinion and enquiry by senior Police and trial by experienced tribunals such as I have suggested above.

20. Probably legislation fixing the minimum age of marriage would serve well as a frontal attack and the raising of the Age of Consent as a flank one. I think the marriage legislation would be more effective as marriage is an overt act, and can be detected and punished while the other is not so. In this part of the country probably average public opinion would not favour either of the two alternatives.

21. Penal Law in such a case can only serve as a potential deterrent. Education and social propaganda are obviously productive of more permanent and durable results.

**Written Statement, dated the 14th August 1928, of Mr. A. MILLER, M.A., Principal, Government College, Ajmer.**

1. The present law is certainly, if not defective, at least archaic. The Age of Consent must naturally go along with the physical development and therefore it sets up a standard in social life also. It is unquestionable from every point of view that the Age of Consent, as it now stands at 13 and 14 respectively for marital and extra-marital state, falls far short of the ordinary development and therefore must be raised, the object of the law clearly being the protection of the immature and minor girls and the evil consequences of an early defloration.

2. (1) In view of the opinion above expressed the question does not arise.

(2) (a) Deterioration of the physique.

(b) Mental degeneration of the parent as well as of the progeny.

(c) Birth of weaklings and high infantile mortality.

(d) Abortions increasing due to lower Age of Consent.

(e) Increase in the number of widows.

(f) Educational backwardness.

(g) Increase of disease.

(h) Drain of national wealth.

(i) Incentive to licentiousness, etc., etc.,

3. Seductions—Very numerous.

Rape—Ordinary.

The period is hardly enough to show palpable effects. Indirectly the Law of 1925 will raise the statistics, because the cases which escaped the law due to lower age are now liable to conviction. So that the convictions at least are bound to increase with further rise in age, but the age is still low and to make any appreciable advance it should be raised.

4. (1—3) Yes, it is so to some extent. As there is not much difference between the age of 12 (provided by the old law) and 13 by the 1925 amendment, the Age of Consent should be further raised.

5. For a few abnormal cases the age is 12 and 15 or 16, but in the large majority of cases it comes about in the 13th and the 14th year. The average is about 14.

Nothing can be said with any definiteness about any particular class, caste, or community—the age of puberty depending on factors such as:—Physical growth of the individual, Vitality, Social and Moral environments, etc., which are found to exist in almost all the varying stages in every caste and community.

6. (1) Stray cases of seduction and rape do occur before puberty but it cannot be said that the cohabitation before puberty is common among any class or classes of people.

(2) Yes. In a fairly large number of cases consummation of marriage takes place within a year after reaching puberty.

(3) Only in a few cases.

7. The fear of the breach of religious injunction leads to marriage in only a small percentage of cases. It is believed that it is a sacrilege for the parents to see their unmarried daughters' passing through the first menstrual period at their house. It is why they believe that daughters between 8 and 11 years of age must be married lest 'Rajodarshan' should pollute the parents.

8. Among the people in whom child marriage is in vogue the Gaona ceremony is performed generally after puberty. In such cases the consummation takes place invariably after the Gaona ceremony.

It is difficult to say precisely how soon after attaining puberty the consummation takes place. There are no hard and fast rules about it. Nevertheless, it will not be much off the mark to say that in the majority of cases it takes place immediately after attaining puberty. This is more true among the lower castes.

9. Puberty is no indication of full physical growth, maturity and sound mental development. It is at the age of eighteen generally; that the growth, is such as to allow consummation of marriage without any distinct and serious injury to the girl or her progeny.

10. A girl's consent given before the age of 18 can in no case be regarded as intelligent and with a due regard of consequences.

11. I know of a number of cases in which cohabitation after puberty left before the girl reached maturity resulted in the ruin of her health. I may mention a few typical cases:—

(1) The age of the girl was 13 or 14, the girl bore a child and not only did she suffer from a number of troubles peculiar to the sex, but she also turned insane.

(2) The birth of the first child was followed by prolonged illness resulting in the death of the mother—age 15 to 16.

(3—5) Health broke down soon after marriage—developed Phthisis followed by the usual relief in such cases—age, the same.

12. Early consummation and maternity are responsible to a fairly large extent for the high rate of maternal and infantile mortality.

It also results—

(i) in cutting short the period of education of the girls and boys and thus handicapping their intellectual growth,

(ii) in putting the worries of the family life on young shoulders,

(iii) results in economic loss to the nation,

(iv) in the creation of weaker generation, etc., etc., vide Answer to Question No. 2.

13. There is a development of public opinion to some extent in favour of extension of the Age of Consent both in extra-marital and marital state since the amending law of 1925. It is true that this opinion is mainly or wholly confined to the educated people, but it is also a fact that it is this class of people which formulates public opinion everywhere. It is wrong to expect that the people to whom the light of education and its liberalizing influence has been denied will ever be able to feel the pinch of the existing social condition and to take up a lead in removing them. Before drawing up this memorandum I talked about the situation to a few illiterate people, and they all agreed without much discussion that there was an urgent necessity of stiffening the law in this direction.

14. Yes, in a fairly large majority of cases. It is no wonder looking at the backward and extremely poor condition of the spread of education among women. At the same time it is also a fact that the educated women who have been rendered capable of understanding their responsibilities hold very strong opinion against the early consummation of marriage.

16. Certainly. Because this raising of age will make 'an appreciable difference in the physical appearance, which will go a long way in the determination of real age. There being not much difference in the physical growth at 13 or 14 years, and as at 16 the maturity is almost complete, I would suggest the fixing of the Age of Consent at not less than 16.

17. Yes, the marital and extra-marital offences must needs be separated. The Age of the Consent for the former may be fixed at 16 and for the latter at 18. Consequently the nature and amount of punishment should be different. The reason for the differential treatment is the fact that the whole of the future life of the girl is bound up with the husband. Whereas the extra-marital offence is not only an offence against an individual but leads to the disruption of the society, and is therefore a much heinous and graver one. I would suggest the following under the above circumstances:—

(1) Extra-marital—The same as it is.

(2) Marital.

(i) Before puberty—Imprisonment of either description extending to 10 years.

(ii) Post-puberty—Imprisonment of either description extending to a year or a heavy fine or both.

18. Yes, it follows from the above. *Mutatis Mutandis* the same as in Sir Hari Singh Gour's Amending Bill with the necessary alterations in the age.

20. A penal legislation fixing a higher Age of Consent will not be quite effective in itself. But coupled with a legislation fixing a minimum age for marriage will act as a wholesome check. For if once a case is punished under the latter law, there is nothing to prevent a couple from living together. This sort of contingency can be met with by the former.

21. The effect produced by social reform by means of education and social propaganda will be the most natural and potent way of eradicating the evil. But because the pace of education and educative propaganda is so very slow, a legislation is needed in order to quicken, and put more life into it.

### **Written Statement of Mr. LAKSHMI NARAYAN, Retired Tahsildar and Honorary Magistrate, Ajmer.**

1. As far as my personal experience goes, I can say that there is no dissatisfaction with the state of the law as to the 'Age of Consent' as contained in sections 375 and 376, Indian Penal Code.

2. The circumstances which tend to justify my above opinion are that the girls generally attain puberty at thirteen when menstruation occurs. A well-developed girl may of course obtain puberty at twelve, and bear child before she completes her thirteen, but such cases are rare. There is, therefore no necessity to increase the age of thirteen.

3. Crimes of seduction or rape are not frequent in our district, and if a few cases of rape occur, the parents do not dare come to court. If they disclose the case and complain they lose their honour among their Society and feel a great difficulty to secure husbands for a raped girl. There has been no appreciable effect of the change of age in 1925. The sentence shall be enhanced in such cases to prevent such crimes.

4. The amendment of 1925 raising the Age of Consent within marital state to 13 years as a matter of fact has not been protecting the married girls against cohabitation with their own husbands within the prescribed age-limit but has, no doubt, it has been one of the causes in stimulating public opinion not to marry the girls until they have sufficiently grown up, or until they have completed 12 years. Much impetus has been given to this idea by the incessant activities of the social reformers. If the parents are punished for performing the marriages before 13, that may prove an

effective check. But there should be sufficient safe-guards against false and improper persecution.

5. The girls generally attain puberty at the age of 13, with a few exceptions, in which cases being weak constituted and emaciated from improper and poor nourishment, the girls attain puberty a year or so after thirteen. Such cases occur in all classes, communities and societies alike. In the higher strata of society the girls are often weaker and take longer to attain puberty.

6. Cohabitation is common after puberty in almost all classes of people. No cases come to court for cohabitation before puberty or thirteen years of age, and I do not think it is common among any class of people.

7. I do not attribute the practice of early consummation of marriage before or after puberty, if it exists at all, to any religious injunction. It can only be due to ignorance of people which can be removed by proper propaganda.

8. Gouna or Muklawa is performed in almost all classes of people in one year, three years, or five years after the marriage is performed. Some forty years ago, the girls were not sent to their husbands' houses until the Muklawa was performed and there was no chance for cohabitation before it. But now the people perform the ceremony 'Pher Phata' in which the bridegroom and the bride make three rounds of the Chowki and the girls often go to their husbands' houses before the Muklawa is performed.

9. I consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage, and that it is sufficient development to justify consummation of marriage without injury to her own health and that of her progeny. India being a hot country, girls generally attain physical maturity soon after puberty.

10. In my opinion, in India, a Hindustani girl of fifteen years is competent enough to give an intelligent consent to cohabitation with a due realisation of consequences.

11. I have experience of three girls who were married before twelve years of age. They conceived and gave birth to children before they completed their thirteen years. Their children died before they were six months old. Two of the girls died of consumption within three years of their marriages, and the third alive is now too weak to bear any child.

12. I think that early consummation and early maturity are certainly responsible for maternal and infantile mortality. The physical and intellectual progress too are greatly affected.

13. There has been further development of opinion in our district in favour of an extension of the Age of Consent in marital cases since the amendment of the law in 1925, but it is confined only to the educated classes. The general public are not in favour of extension. The orthodox are rather against it.

14. The women in our district do favour early consummation of marriage for their children but in no case before puberty.

15. It is too often very difficult to determine the age of girls. The Municipal office does maintain a register of births according to which one may find out the age of girls. But as the office does not record the particular names of the girls one cannot definitely ascertain whether it is the correct date of some particular girl which is sought for. I therefore beg to suggest that some Municipal official may be appointed to enquire names of girls after six months of their birth when their names are fixed so that the age of a particular girl may be easily ascertained.

16. The raising of the Age of Consent, in my opinion, can have no possible effect on the difficulty of determining the age of a girl.

17. I would suggest that marital and extra-marital offences should be different. Marital offences should be leniently dealt with while the extra ones should be severely punished. Infliction of fine not exceeding Rs. 500



would be sufficiently deterrent in marital offences, while in the case of extra-marital offences transportation for life is sufficient punishment.

18. The trial for extra-marital offences should be ordinarily held as at present. But the trial for marital offences should be held by a special Indian Magistrate of the first class. Its investigation should be by an Indian Deputy Superintendent of Police. The trial should be held in camera.

19. False information by a police officer to the Deputy Superintendent should be met with imprisonment not exceeding one year and fine not exceeding Rs. 500.

20. Fixing of minimum age of marriage would be in consonance with public opinion in our district.

21. The progress of social reform by means of education and social propaganda would secure the object in view. Because none can be sure of the result of a case in a court of law with all its technicalities and cumbrous procedure.

### **Written Statement of Mr. D. C. WILKIE, M.A., Missionary, Beawar, Rajputana.**

2. The reasoning powers of girls under 16 is not properly developed and they are not properly able to envisage the consequences of giving consent.

4. Most people are ignorant that the Age of Consent has been raised so the amendment of 1925 has not so far been successful in checking the evil in this part of the country. Ordinary marriages are contracted earlier than 13 and on the second day when the bride arrives at her husband's house both are made to sleep in one room for the consummation of marriage. At the same time there is a considerable body of opinion ready to condemn the practice if it result in the girl becoming a mother at too early an age. This is perhaps not attributable to the 1925 amendment.

A bill making marriage before the girl attains the requisite age seems the only remedy.

5. At the age of 12 or 13.

6. The practice is common amongst all classes on account of the reason mentioned in answer to Question 4.

No. Neither bridegroom's nor bride's relations are likely to raise a case, and unless through severe injury being done necessitating the calling in of a doctor the case is not likely to be raised by anyone.

7. Not to religious injunction, for many of the Pandits hold that the practice of infant marriage is a comparatively recent one dating only from Muhammadan times. This may not be historically true but shows that there is not religious injunction to the effect. It is rather due to social custom and the engrained conservatism of the people.

8. A Gaona ceremony so called is performed but not in the strict sense of the term. Cases are known where the Gaona ceremony takes place after the girl has given birth to a child.

9. This question is more a medical one, but on the general ground that development in nature is development and not a sudden break I think all are capable of pronouncing the opinion that a period should intervene between attainment of puberty and consummation of marriage. One year would be a very low statement, and two or three years would be in every way preferable.

10. Not under 16.

12. Yes. The poor physique of most of the people while due to no one cause is one result. The over-development of sexual instincts is another which again affects the physique of the people.

13. Public opinion is moving in favour of later marriage but it is impossible to say that this change is in any measure due to the 1925 amendment.

**Written Statement, dated the 14th August 1928, of Mr. J. A. DeSOUZA, Extra Assistant Commissioner, Marwara.**

1. There is no dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code.
2. The present law should, in my opinion, be improved by fixing the Age of Consent at 16, because below this age the reasoning faculty of a girl is not fully developed.
3. Crimes of seduction or rape are not frequent in this part of the country. Persons are ignorant of the amendment of the law made in 1925 raising the Age of Consent to 14.
4. The amendment of 1925 has not so far succeeded in checking the evil, in this part of the country, in any respect. Ordinarily marriages are contracted earlier than 13 and on the second day when the bride arrives at her husband's house both, according to the custom in vogue, are made to sleep in one room for consummation of marriage. To make the law effective it would, in my opinion, be necessary to prohibit marriages until the girl has reached the Age of Consent.
5. The usual age at which girls attain puberty in this part of the country among all classes of society is 13.
6. Cohabitation is common in this part of the country among all classes of people excepting Christians before puberty and soon after puberty on account of the reasons mentioned in para. 4 above, no cases of this nature come to court.
7. There is no religious sanction for the early consummation of the marriage before or at puberty.
8. Gauna or garbhadan ceremony is performed in this part of the country only in the higher castes. It usually occurs after 1 to 3 years after the marriage ceremony and generally after the attainment of puberty.
9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. The consummation of marriage cannot, in my opinion, take place without injury to the girl's health and that of her progeny until the girl has completed 15 years.
10. A girl in India would be competent to give an intelligent consent to cohabitation with a due realisation of consequences at the age of 16.
11. I am informed that there are many cases in which cohabitation before full physical development of a girl has resulted in injury to health or body or has prejudicially affected her progeny.
12. Early consummation and early maternity is no doubt responsible for high maternal and infantile mortality and for intellectual and physical deterioration of the people.
13. People here are ignorant of the law relating to the Age of Consent. There has been development of public opinion in this matter only in the town of Beawar in this sub-division, since the Sarda Bill has come on the tapis.
14. Women in this part of the country are in favour of the early consummation of marriage for their children.
15. No difficulties have been experienced in determining the age of girls in connection with offences under sections 375 and 376, Indian Penal Code.
16. I am of opinion that the difficulty or margin of error in determining the age would not be materially reduced or minimised if the Age of Consent is raised to 14 years or above, because it is more easy to determine the age of a girl under 14 years than that of one above that limit.
17. I am of opinion that extra-marital and marital offences should be treated as different offences. In extra-marital offences the maximum punishment should be as provided in section 376, Indian Penal Code, while in marital offences, the maximum punishment should be 3 years and fine.

18. It does not seem to be necessary to make any difference in the procedure of trials for offences within and without the marital states.

19. I am of opinion that no special safe-guards are necessary against collusion to protect the offender or against improper prosecution or extortion.

20. I am of opinion that penal legislation fixing a higher Age of Consent for marital cases is not likely to be more effective than legislation fixing the minimum age of marriage. The former is practically a dead letter. The latter alternative would be in consonance with public opinion in this part of the country.

21. I am of opinion that both the measures referred to should be adopted to secure the object in view.

**Written Statement, dated the 17th August 1928, of Mr. AMRITLAL K. BAPUA, State Hospital, Banswara.**

5. Usual age of puberty—below 14 and 16. Earlier in higher classes than in lower ones.

6. Yes, before puberty and soon after puberty in practically all communities, because of the early consummation of marriage.

7. There is no religious injunction I know of. I take it to be due more to illiteracy rather than to religion. When there is no injunction, what could be the penalty for its breach.

9. No.

Below the ages of 16 and 18, or from one to two years after puberty.

10. From 14 years onwards.

12. Yes. It is one of the chief causes of high maternal and infantile mortality and hindrance to intellectual and physical progress of the people.

14. Yes, those who are uneducated, and there is a majority of them.

21. Penalising the early consummation of marriage would be more effective in securing the object in view, rather than leaving it to the progress of social reform.

**Written Statement, dated the 21st August 1928, of Mr. B. C. OLIVER, M.D., Banswara.**

My experience is in a Native State.

3. I do not know that the law applies here, I have not had many cases brought to my notice, but there are some.

5. About 14. Hence know it at 12 but unusual.

6. Probably before puberty sometimes, but the reaching of puberty is the recognised time.

7. See accompanying paper.

9. No. I have seen most mothers at 16, 17 years for the first, and usually get on all right. But I consider 18 a better age for marriage.

10. About 16 years if she has been properly taught.

11. Most young married women look older than they really are. I have seen difficult labours in girls of 14 and 15 years who were normal except for their size.

12. Yes.

14. They seem to.

17. I would forbid marriage till the Age of Consent. But a husband should suffer less if marriage is allowed before the Age of Consent.

21. If there is to be Swaraj—public opinion should first be educated. But if there is to be a dictatorship such as in Turkey and in Italy, then the law first.

**Resolutions passed at a meeting of representative Indian ladies, numbering about two hundred, under the auspices of the Bengal Presidency Council of Women, held in the Y. W. C. A. Hall, on the 17th July 1928.**

I. That this representative gathering of Indian women, under the auspices of the Bengal Presidency Council of Women, heartily supports Mr. Sarda's Child Marriage Bill, as amended by the Select Committee of the Legislative Assembly, raising the marriageable age in India, as a beneficent and necessary measure.

II. That this representative gathering of Indian women, under the auspices of the Bengal Presidency Council of Women, heartily supports the principle of Sir H. S. Gour's Age of Consent Bill, raising the age of consent in India to 16 years, as a beneficent and necessary measure.

(From Honorary Secretary, Bengal Presidency Council of Women, Calcutta.)

**Resolutions passed at a public meeting of ladies held at Madras under the auspices of the Sri Sarda Ladies' Union, Women's Indian Association, Indian Ladies' Samaj, Women Graduates' Union and Mothers' Union, on the 28th July 1928.**

1. This public meeting of ladies representing the several women's associations in the city of Madras accords its full and hearty support to the Report of the Select Committee appointed to consider Rai Saheb Har Bilas Sarda's "Prevention of Child Marriage Bill".

2. This meeting also extends its warm support to Dr. Sir Hari Singh Gour's Bill on the "Age of Consent".

3. This meeting authorises the President to communicate the resolutions to the Government, the Chairman of the Age of Consent Bill Committee and also to the promoters of the Bill.

(From Dr. S. Muthulakshmi Reddi.)

**Resolutions passed at a meeting under the auspices of Sri Sarda Ladies' Union, Women's Indian Association, Indian Ladies' Samaj, Women Graduates' Union and Mothers' Union, at Hindu High School, Madras, on the prevention of child marriage.**

"This meeting extends its warm support to 'Hari Singh Gour's Bill' on the raising of the age of consent to 14 within marital relationship and to 16 outside marital relationship."

("Justice," 30th July 1928.)

**Resolution passed at a Ladies meeting in the Town Hall, Darjeeling, on 11th August 1928.**

"That in the opinion of the women of Darjeeling there should be an advance on the present Age of Consent Bill now under the consideration of the Government of India."

(From Mrs. G. Blair, Darjeeling.)

**Copy of telegram, dated 13th August 1928, from the President, Cawnpore Ladies' Association, Cawnpore.**

Cawnpore Ladies' Association assembled in meeting heartily support Sir Gour's and Sarda's Bills in the interest of India's future.

**Copy of a telegram, dated the 23rd November 1928, from Mrs. Rangamani Ammal, Kulladakurichi (Madras Presidency).**

Kulladakurichi Brahmin ladies agree marriage age twelve, consent age fourteen.

**Letter, dated the 24th November 1928, from the Secretary, Women's Association, Muthialpet (Madras).**

I am authorised to intimate to you that in a meeting held on 23rd November 1928 the female population of Muthialpet felt very sorry for the witness Sreemathi Pattwardan claim to be the true representative of women-folk in general of Madras and her views. The meeting also resolved to recommend to your Committee that she is not the true representative of women-folk and her views are not ours. The meeting also passed a resolution that in the opinion of the meeting there should be no limit fixed by any outsider.

**Resolution passed at the Third Annual Conference of the Bombay Women's Committee on Educational Reform, held on 18th December 1928.**

"This Conference deeply deplores the effect of early marriage on education. It emphatically condemns the custom of allowing immature boys and girls to become parents. It calls on the Central Government and the Provincial Legislatures to follow the precedent set up by the Indian States of Baroda, Mysore, Rajkot, Kashmir, Gondal, Indore, Limbdi and Mandi which have raised the legal age of marriage. This meeting demands that the legal age of marriage for girls and boys should be made 16 and 21, respectively. While welcoming Rai Saheb Harbilas Sarda's attempt to pass legislation prohibiting early marriage, this Conference strongly protests against his proposed ages of 12 and 15, and calls on him and the Select Committee to amend his Bill, in conformity with this resolution. It wholeheartedly supports Sir Hari Singh Gour's Age of Consent Bill as a step towards this end."

(From Lady D. J. Tata.)

**Resolution No. 4 passed at the 7th Sind Students Conference, held at Larkana on the 5th, 6th and 7th May 1928.**

(4) That this Conference supports Mr. Harbilas Sarda's Child Marriage Bill as amended by the Select Committee and is further of opinion that minimum age of boys and girls for the purpose of this Bill should be 21 and 16, respectively.

(From General Secretaries of the Sind Vidyarthi Samagam, Karachi.)

**Resolution passed at a meeting of the Sanathanite Hindus in Porter Town Hall, Kumbakonam (Madras), on 5th August 1928, under the auspices of the local Hindu Tract Society.**

"This meeting appoints a Sub-Committee consisting of Rao Bahadur N. Krishnaswami Iyengar, Professor K. Sundararama Aiyar and Mr. S. Mahalinga Aiyar with power to co-opt for drawing up and forwarding memorials to the Government against (1) The Child Marriage Bill of Mr. Harbilas Sarda and (2) the Age of Consent Bill of Sir H. S. Gour."

("Hindu," Madras, dated 6th August 1928.)

**Resolution passed by the public meeting held on 8th August 1928,  
under the auspices of the Hindu Sabha, Ajmer.**

"Resolved that the citizens of Ajmer in a public meeting assembled hereby unanimously approve of and whole-heartedly support Dr. Gour's Age of Consent Bill and Mr. Sarda's Provention of Child Marriage Bill."

(From President, Hindu Sabha, Ajmer.)

**Resolution passed at a meeting of Bais Panchayet, Dacca, on 8th  
August 1928.**

"This meeting of the Bais Panchayet, Dacca, strongly protests against the proposed Child Marriage Bill, the Age of Consent Bill and the Inter-Caste Marriage Bill introduced in the Legislative Assembly as they directly clash with Islamic principles and social custom and earnestly appeals to the benign Government to protect the people from such legislation."

("The Bengalee", Calcutta, dated 11th August 1928.)

**Resolution passed at a meeting of the Delhi Provincial Rajsthani  
Navjeevan Mandal, a Marwari Social Reform Body, at Delhi, on  
the 10th August 1928.**

"This meeting of the Delhi Provincial Rajsthani Navjeevan Mandal accords its full and unqualified support to the proposed Sarda Bill preventing early marriage. It definitely holds the opinion that to eradicate the evil of early marriage the passage of the said Bill is absolutely essential. The cry that the Shastras stand in the way of legislation is unfounded."

("Tribune", Lahore, dated 12th August 1928.)

**Resolution passed at a public meeting of the Sanathanists of Hardwar,  
held on 17th August 1928, under the Presidentship of the Maha-  
raja of Dharbhanga.**

"This meeting of the Sanatanists of Hardwar protests against the appointment of the Religious Endowments Fund Enquiry Committee and the provisions of the Gour and Sarda Bills."

("The Hindustan Times," dated 23rd August 1928.)

**Telegram, dated the 17th September 1928, from the Secretary, Maltil  
Hitkarniwira, Benares.**

Our meeting decides getting wife's consent at puberty to husband and her marriage after 12 are against our shastras.

**Resolutions passed in a public meeting of the citizens of Turaiyur,  
Trichinopoly District, on 9th October 1928.**

1. This public meeting of the citizens of Turaiyur protests against the "Child Marriage Bill" introduced in the Legislative Assembly, as being an extreme, mischievous and unwarranted interference of the State in the time long personal laws of the people.

2. This meeting of the public citizens of Turaiyur protests against the great haste with which such an important legislation is being hurried up in an irresponsible manner and demands that in view of the insufficient in-

formation to and education of the mass of population in socio-religious legislation that the Bill be published broad-cast in every village so that the people may give their informed opinions upon the provisions of the Bill.

3. The meeting of the public citizens of Turaiyur views with alarm, the penal provisions of the Bill and apprehends that their enforcement will cause great hardship and disruption, entail serious and far-reaching consequences in the society.

4. This meeting of the public citizens of Turaiyur calls upon the Viceroy to veto the further progress of the Bill as a mischievous interference of the State in socio-religious personal laws of people, running contrary to the religious neutrality of the Government guaranteed to the people by successive royal charters and proclamations.

5. That this public meeting authorises the President to communicate the resolutions to the President, Age of Consent Committee.

(From Mr. A. Rangaswami Aiyengar, President, public meeting of the citizens of Turaiyur.)

**Resolutions passed at a meeting of the Lahore Students Conference held under the Presidentship of Dr. Sh. Mohd. Alam, Bar.-at-Law, M.L.C., Punjab, on 16th October 1928.**

(a) This conference of the students of Lahore supports the principles underlying the Sarda Bill and is of opinion that to avoid child marriage legislation is essential. It further demands that the age of consent be fixed to 21 for boys and 15 for girls.

(b) It further condemns the action of those members of the Assembly who have put forward a petition to the Viceroy against the consideration of the Sarda's Bill and urges upon the members of the Legislative Assembly to support this Bill.

(From the General Secretary, Lahore Students Conference.)

**Resolution passed by the Bombay Muslims in a public meeting under the Presidentship of Mr. A. R. Dintimkarj, P., held on 1st June 1928.**

This public meeting of the Mussalmans of Bombay disapproves of Sir Hari Singh Gour's Bill and Rai Saheb Harbilas Sarda's Bill for restricting the age of marriage as the provisions of the Bills contravene the Sheriat of Islam, which allows conjugal relations with married girls as soon as she has reached puberty irrespective of her age and requests the Government of India to exempt the Muslim community from the operation of the Bill.

(From Mr. M. H. Moosa, Secretary, Anjuman-i-Khadim-i-Islam, Ghogri Moholla, 2nd Cross Lane, Bombay.)

**Resolution No. 18, dated the 14th November 1928, passed at a meeting of the Directors of the Siddhantha Prakasa Sabha, Madras.**

"That this meeting while entering its emphatic protest against the crusade and mischievous propaganda that is being carried on by a certain interested few against the legislation to fix age of consent and consummation, gives its whole-hearted support for any legislation that may be deemed necessary to eradicate the evils of the present marriage system in this country causing more untold miseries and cruelties particularly to the women population in the name of religion."

(From Secretary of the Sabha.)

**Letter, dated the 22nd November 1928, from the Secretaries, Dr. T. M. Nair Literary Association, George Town, Madras,**

A general body meeting of the Dr. T. M. Nair Literary Association, George Town, Madras, was held this morning at 7-15 A.M. under the presidency of Mr. V. Sundaresa Mudaliar, Chairman, Executive Committee of the Association, when the following resolutions were unanimously passed:—

1. That this General Body Meeting of the Dr. T. M. Nair Literary Association, George Town, Madras, extends its hearty welcome to the members of the Age of Consent Committee now sitting at Fort Saint George and sends up its prayers to God to open the eyes of the public to realise the far-reaching task that the said Committee had undertaken.

2. That this meeting herewith forwards the considered opinion of this Literary Association as expressed in two Ordinary Meetings of this Association held on Sunday, the 19th February 1928 and 7th October 1928, to discuss "The evils of late and early marriages" that sixteen shall be the marriageable age in the case of girls and twenty-one in the case of males.

3. That this meeting authorises the Secretaries of the Association to communicate the above resolutions to the said Committee and as well as to the press with a short account of the proceedings.

(From Messrs. C. Krishnaswamy and S. V. Rathnasabapathy, Secretaries.)

**Copy of telegram, dated the 28th November 1928, from Secretaries, Saliar Mahajana Sangam, Aruppukottai.**

We support marriage ages 18 and 14 for males and females, respectively.

**Resolution passed at a public meeting held under the auspices of the "League of Youth", Mannargudi, Tanjore District, in the National School Hall on the 6th December 1928 at 5-30 p.m.**

"This meeting resolves that any amendment of the Penal Law imposing a distinction in the age of consent between a husband and a stranger would be invidious and encourage the prevailing tendency to subjugate women and treat wives as mere property."

"Resolved that the Secretary of the League do communicate the resolution to the Age of Consent Committee and to the press."

(From Mr. S. Ramanathan Ayl., President, League of Youth.)

**Resolution passed by the Tanjore District Brahmin Conference, held at Kumbakonam, on the 16th December 1928, under the presidency of M. R. Ry. Dewan Bahadur, T. R. Ramachandra Aiyer Ayl., and attended by over 1,000 Delegates.**

1. (1) This Conference is emphatically of opinion that it is beyond the province of any legislature, much less of our composite legislatures, to legislate on matters which are inseparably connected with the religious rites and usages of any community.

(2) This Conference records as its considered opinion that in any constitution that may be devised for the future Government of India, all matters concerning the religion, and usages of any community should be exempted from interference by the legislature, or by Government, and that appropriate steps should be immediately taken to safeguard such fundamental rights.



Proposed by : Brahmasri, K. Balasubramaniya Aiyer, Advocate, Mylapore.

Seconded by : Brahmasri, T. Kothandarama Aiyengar, Tanjore.

Carried unanimously.

II. This Conference records its condemnation of Harbilas Sarda's and Dr. Muthulakshmi Reddi's Marriage Bills, and protests against the passing of them, as the said Bills, if allowed to become law, will directly interfere with and destroy the sacramental character of "Marriage", which according to all accepted authorities is and ought to be performed before a girl attains puberty, and will gradually make marriage an optional institution. They repudiate the notion of the Hindu marriage being a secular contract, and the authority of any secular body to interpret the Sastras in respect thereof.

They are firmly of opinion that even supposing the evils complained of do exist—which, in any case, are greatly exaggerated and exist, under the present world conditions, in some form or degree, in all societies—the causes are to be found, not in the pre-puberty betrothal or early consummation after puberty, but in the acute economic stress and widespread poverty, due to growing disintegration of the Indian people dying under the force of unequal foreign competition in all departments of life and inexcusable self-neglect, leading to the abandonment of the salutary injunctions prescribed by the Sastras in regard to various personal habits, including food, drink, etc.

(2) This Conference emphatically protests against all legislative interference in the manner sought, and further warns the Government and all concerned not to take hasty action at the instance of enthusiasts, and not to ignore the opinions and sentiments of people who, by tradition and conviction, honestly believe in both the sanity and sanctity of their marriage laws.

(3) This Conference is firmly of opinion that the proposed legislation, being in effect the application of physical force, and being in this case directed to the penalisation of a socio-religious custom based on universal consent, and subversive of the principle of strict neutrality in religious matters so steadily kept in view and maintained till now by the Government, is improper and unjust, and calls upon all legislative bodies in the land to throw out the said Bills as undesirable and beyond their competence.

III. This Conference records its conviction that the Committee on the Age of Consent Bill is not representative in character, as the interests of those adversely affected by its provisions are not represented therein, and observe that the personnel of the Committee does not inspire confidence, as several members of the said Committee, even after they have been drafted on the Committee, have not hesitated to express their opinion even before the "evidence" has been fully recorded and by their utterances on public platforms and at social functions have not unreasonably induced the impression of doing propaganda work for the promotion of the Bill.

(2) This Conference has to record with much regret that the method of handling some of the witnesses by some of the members of the Committee has been neither fair nor was calculated to inspire confidence, and records its conviction that in the selection of witnesses, the exponents of the orthodox views have not been adequately represented, and that many who ought to have been invited have been ignored, and no attempts have been made to ascertain the general opinion of Brahmin ladies.

Proposed by : Brahmasri, T. Srinivasa Iyengar, Retired Sub-Judge, Mangudi.

Seconded by : Brahmasri, Ramachandra Iyer, Retired Tahsildar.

Carried unanimously.

IV. This Conference places on record its strong sense of disapprobation of the attitude of those members of all legislative bodies who have failed to realise the far-reaching implications of the said Marriage Bills and the Age of Consent Bill, and calls upon all Brahmins to vote for and work for the return in future of only such candidates to the legislative bodies as would previously give a solemn undertaking that they would do nothing from their

places which will interfere with the religion and wound the religious susceptibilities of any community.

Proposed by: Brahmasri, U. P. Krishnamacharya of Benares.

Seconded by: Brahmasri Srinivasathacharya.

Supported by: Brahmasri, R. Ramasesha Ayyar, Advocate, Tanjore.

Carried unanimously.

**Resolution passed at the Conference of the All-India Medical Association at Calcutta under the presidency of Dr. G. V. Deshmukh of Bombay on the 26th/28th December 1928.**

"This Conference resolves that in the interest of the child and the health of the mother the union between men under 20 years of age and women under 16 years of age is undesirable on scientific grounds."

(From Mr. Gonesh Prasad Sahu, Banker and Zamindar, Champaran, Motihari, B. & N.-W. Railway.)

**Resolution passed at a meeting of the Young India League Parliament, Madras, on 2nd January 1929.**

"That in the opinion of this house, legislation for post-puberty marriage is the crying need of India at the present day."

(From Secretary of the League Parliament.)

**Letter, dated the 30th January 1929, from the Secretary, Cawnpore Medical Association, Cawnpore.**

After due deliberation our Association has come to the conclusion that the age of consummation for an average healthy Indian girl should be 16 (sixteen) years on scientific grounds.

**Resolutions passed by the Bengal Namasudra Conference and by the Bengal People's Association.**

1. In the 10th session of the All-Bengal Namasudra Conference held at Faridpur on the 28th December 1926 the following Resolution was unanimously adopted:—"Whereas early marriage is one of the principle causes of degeneration and downfall of the society this Conference requests the guardians and parents of this society not to give their sons in marriage before the age of 20 and the daughters before 14 (fourteen)."

The same Resolution was adopted in the 11th session also which was held at Maldah on 27th December 1928 with the following additional clauses:—"This Conference strongly supports the Marriage Bill of Rai Sahib H. Sarda, M.L.A., in the Assembly."

2. The Bengal People's Association in its 3rd and 4th Annual Conference held at Gopalganj on 28th June 1926 and at Calcutta on 18th July 1927, respectively, unanimously adopted:—"This Conference strongly condemns the custom of early marriage amongst the constituent communities (the so-called Backward classes) and requests every member of the communities of which the Association is constituted not to give their children in marriage, in case of boys before 20 and in case of girls before 13.

In the special session of the Bengal Depressed Classes Conference held at Barnipur on the 17th July 1927 the following resolution was unanimously

carried:—"This Conference urges upon its members to observe strictly the principle that girls should not be married before 15 and boys before 20."

(From Mr. R. L. Biswas, Secretary, All-Bengal Namagudra Association, and Joint Secretary, Bengal People's Association (1926-28), and the Organiser of Bengal Depressed Classes Association.)

**Resolutions passed by the Kistna District Varnasrama Dharma Conference held at Adivi Nekkalam Gannavaram Taluk on 20th April 1929 under the presidency of Brahmasri N. Ananta Rama Sastri.**

1. This Conference is firmly of conviction that in matters regarding religion and marriage, either the Assembly or the Provincial or Local Legislatures should not interfere even with the slightest extent and records its condemnation that so-called Council Members, who under the deceitful feigned pretext that they are the representatives of the people go to the Councils and insist upon introducing such bills as the "Sarda's Child Marriage Bill" and "The Age of Consent Bill" even against the will of the public.

2. This Conference records its condemnation of the alleged approval and assent accorded to the said "Sarda Bill", "The Divorce Bill" and "The Age of Consent Bill" by some of the Indian women pretending to be representatives of the women sect as a whole and is emphatically of opinion that the said opinions are but individual opinions of the women concerned and are not at all representatives of the general feeling of the orthodox Indian women.

3. In conclusion, this Conference prays the Government, witnessing the agitation among Hindus consequent on the introduction of "Sarda's Child Marriage Bill", not to allow of the introduction by any of the members of the Legislative Bodies of any such religious reform bills and throw them out as undesirable, except under the express consent of the Matadhipathies and the orthodox advocates of Hindu Religion.

**Resolutions passed at the Andhradesa Varnasrama Dharma Conference held at the "Gow Mahal", Bezwada, on 11th and 12th May 1929, under the Presidentship of M. R. Ry. Prabhala Lakshmi Narasimham Pantulu Garu, Advocate, Vizagapatam.**

This Conference is of opinion that the report of the Age of Consent Committee that only 3 per cent. of the Hindus are against Sarda's Marriage Bill and the Age of Consent Bill is entirely baseless, that the majority of the Hindus who are Sanatanists are against the Bills; that the conclusions arrived at by the Age of Consent Committee, are only one-sided and untrustworthy as the composition of the committee and the method of enquiry was defective.

This Conference requests the President to convey to the Secretary of State for India, in England, to the Government of India, to the Government of Madras and to the Members of Assembly, the disapprobation prevalent in the majority of the people about Sarda's Marriage Bill with a view to the same being dropped.

This Conference exhorts all voters in Andhradesa to give their votes only to those candidates for Legislatures who would promise that they will not introduce any bills affecting the religions and customs of the people and that they will oppose any such measures introduced by others and requests the Madras Members in the Assembly to vote against Sarda's Marriage Bill.

This Conference refutes the statement made by Social Reformers that a large number of Hindu women are in favour of these Bills and asserts that women who favour these Bills are only the insignificant minority having a smattering of Western Education.





